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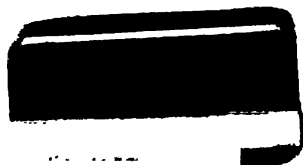
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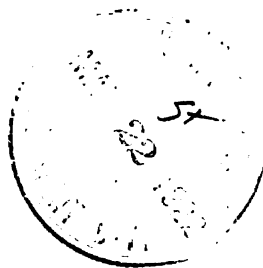
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U.S.

INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 61

**DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES**

MARCH TO MAY, 1921

REPORTED BY THE COMMISSION



**WASHINGTON
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✓

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 10970.¹

INTERSTATE COTTON SEED CRUSHERS' ASSOCIATION v. DIRECTOR GENERAL, ALABAMA & VICKSBURG RAILWAY COMPANY, ET AL.

Submitted November 15, 1920. Decided March 8, 1921.

1. First-class rates, any quantity, applicable on hair and wool press cloth from Boston, Mass., New York, N. Y., Philadelphia, Pa., and related points to points in Texas and the southeast; from Houston, Tex., to points in the southeast; and between points in the southeast not found unreasonable or unduly prejudicial when applied on less-than-carload shipments, but found unreasonable as applicable on carload shipments. Reasonable carload rates prescribed for the future.
2. Conclusions reached in *Oriental Textile Mills v. A. & V. Ry. Co.*, 48 L. C. C., 81, modified, in part, on further hearing.

Clifford Thorne, Ralph Merriam, and Paul Kayser for complainants.

Henry Thurtell and William Burger for defendants.

REPORT OF THE COMMISSION.

ATCHISON, Commissioner:

The Interstate Cotton Seed Crushers' Association, complainant in No. 10970, is a voluntary association of manufacturers and producers of vegetable oils, cakes, and meals operating some 800 vegetable-oil mills in the southern states. On behalf of its members it seeks the establishment of carload rates on hair press cloth and wool press cloth from Boston, Mass., Philadelphia, Pa., and New York, N. Y., and points named in defendants' tariffs as taking the same rates or arbitraries higher, to points in Texas and in that part of the United States east of the Mississippi River and south of the Ohio River, hereinafter referred to as the southeast, between points in Texas and the southeast, and between points in the southeast generally. It also attacks the rates applying on hair press cloth and wool press cloth in carload and less-than-carload quantities from Houston, Tex., to points

¹ This report also embraces No. 8286, *Oriental Textile Mills v. Alabama & Vicksburg Railway Company et al.*, and Fifteenth Section Application No. 7086.

in the southeast and between points in the southeast. We will refer to such commodities generally as hair and wool press cloth. The complaint alleges that the maintenance of the same rates for the transportation of carload as of less-than-carload shipments is unreasonable, unjustly discriminatory, and unduly prejudicial, and unlawful by comparison with the rates on cotton press cloth and other articles made of cotton.

The rates on hair and wool press cloth from Houston Heights, a suburb of Houston, to destinations in Alabama, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee were before us in No. 9236, *Oriental Textile Mills v. A. & V. Ry. Co.*, 48 I. C. C., 31, but were found not unreasonable or unduly prejudicial, except certain joint rates to points in the Mississippi Valley, which exceeded the aggregates of the intermediate rates. Upon petition, that proceeding was reopened and further evidence was taken, which is now before us. The rates under attack in No. 9236 are also embraced in the complaint in No. 10970, and by agreement the two proceedings were consolidated for oral argument and disposition.

Fifteenth Section Application No. 7086 was filed by F. A. Leland, agent, asking authority to file tariffs which would cancel the carload commodity rates over routes composed in part of carriers that were not under federal control. That application was heard in connection with the rehearing in No. 9236, but, as the law does not now require that such authority be secured, we do not pass upon the Fifteenth Section Application. Substantially the same issues were presented in *Press Cloth Rates*, 60 I. C. C., 414.

Press cloth is a coarse, heavy fabric manufactured from wool or hair and from cotton, which is used in the separation of liquids from solids by pressure filtration. Its principal use in the southeast and in Texas is in mills crushing cotton seed, copra, palm kernels, soya beans, and other oil-bearing seeds and nuts. It is also used in the separation of fats in packing houses, the manufacture of dyes, the separation by filtration of certain minerals, and in the manufacture of sugar and chocolate. It is shipped in rolls from 10 to 18 inches in width and from 36 to 40 inches in diameter weighing about 400 pounds. The annual consumption of hair and wool press cloth by the cottonseed oil and similar industries approximates 3,000,000 pounds, and by all industries about 5,400,000 pounds. The annual consumption of cotton press cloth for all purposes is about 3,000,000 pounds, of which but a small fraction is used in the hydraulic presses in vegetable-oil mills.

The classification provided at the time of the hearing and now provides only for "cloths or mats, filter press." This implies a provision merely for cloths or mats cut to size and ready for immediate use. The classification did not and does not specifically provide for

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the material from which such cloths or mats are cut or what might be properly described as cloth or matting, which is the commodity here considered. The rating may be said to be doubtful. However, all interested parties have interpreted the terms cloths or mats as comprehending the material in question. Adopting that interpretation for the purposes of this report, it may be said that the present ratings, any quantity, on this material whether made of wool, hair, or cotton are uniformly first class, except the cotton, which is rule 25 in the official classification. The classification should be relieved of its ambiguity by describing this material as cloth or matting and retaining the terms "cloths" or "mats" to provide for such, if now shipped.¹

Press cloth is manufactured from wool and hair in New Orleans, La., Augusta, Ga., Columbia, S. C., Houston, Tex., Brooklyn, N. Y., West Chelmsford, Mass., and Baltimore, Md. Houston is the only point from which carload commodity rates have ever been maintained. Carload commodity rates were in effect from Houston to Memphis, Tenn., Vicksburg, Miss., and New Orleans for many years, but during the period of federal control they were canceled as applied over routes composed wholly of carriers then under federal control. Schedules were also filed proposing to cancel such rates over routes composed in part of carriers that were not under federal control, which were suspended pending investigation as to the propriety of the proposed cancellation. After hearing, the cancellation of the commodity rates to the Mississippi River via routes in which carriers not under federal control participated was found to have been justified in *Press Cloth Rates, supra*, as those routes were in the main markedly circuitous and impracticable, so that probably no traffic would move over them if the rates were the same as those applying via the normal routes.

It is urged that the volume of movement of press cloth in carloads justifies the establishment of carload rates from all points of manufacture to the most important consuming points. The showing is made that the carload shipments of wool and hair press cloth from Houston to Mississippi River points and to the southeast numbered 6 during 1917, 4 during 1918, and 14 during 1919. The defendants state that they are able to check only 5 such carloads in 1917, 2 in 1918 and 12 in 1919. Ten carloads were shipped from Houston in 1915 and 8 in 1916, but the record does not show the destination of such shipments.

Few mills consume a carload of press cloth during the crushing season. If certain individual mills in Memphis, and Macon, Atlanta, and Savannah, Ga., purchased their entire season's requirements at

¹ At the time of the hearing, the rating on the cotton material in the southern classification was fourth class. Effective August 15, 1920, it was increased to first class.

one time the total would perhaps aggregate a carload for each. The average mill will use from 1,000 to 12,000 pounds, and the majority will not require more than 4,000 or 5,000 pounds each season. A few companies operate groups of mills, and at times do order press cloth in carload quantities. One company, for example, operates 75 crude-oil mills, some of which are located in and near Atlanta; others are in the vicinity of Augusta, Ga., Charlotte, N. C., Columbia, S. C., and Montgomery, Ala. In its various mills it consumes about 10 carloads a year, which it could ship to central points for distribution in less-than-carload quantities. In 1919 it received eight carloads from the manufacturer in Houston. Another company operates 12 mills which consume in the aggregate approximately 10 carloads a year. In all, six companies are named which could ship in carload quantities. Their combined requirements are about 33 carloads a year.

In addition to the movement to the particular companies named complainants predict that with carload rates there would be a movement from the press cloth factories to central points for distribution by the manufacturers in small quantities to the independent mills. Press cloth is a commodity without which a mill can not be operated. It is urged that it would be of advantage to both small and large mills to have available near-by distributing points from which a supply could be obtained promptly when required without the delay incident to the movement from distant factories. Under the any-quantity rate basis there is no inducement to manufacturers to ship in carloads to distributing points.

Complainants refer to many commodities which move in relatively small volume, for which carload ratings have been provided. Among them are baseball bats, bird sand, fossils, human bones, confetti, clay smoking pipes, medicated cough drops, and pyrographic wooden novelties. The carload rating on cough drops, for example, was established on a movement of from 10 to 12 carloads a year; on baseball bats on a movement of from 25 to 30 carloads a year; and on fossils on a movement of about 6 carloads a year.

Defendants take the position that since the consumption of press cloth, and therefore the unit of sale and transportation, is in less-than-carload quantities there is no need or warrant for the general introduction of a new unit of transportation, and cite a number of cases in which we declined to establish carload ratings on various commodities. However, as we stated in *John Taylor Dry Goods Co. v. M. P. Ry. Co.*, 28 I. C. C., 205, 207, each case must be considered on its own merits. Defendants also argue that the advantages of carload ratings would accrue only to the few larger mills or controlling companies, while the great majority of mills in the south would be handicapped by the imposition of higher charges than

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were paid by their competitors. But no manufacturer or consumer of hair and wool press cloth is shown to be opposed to the establishment of a carload rating. In our original report in *Oriental Textile Mills v. A. & V. Ry. Co., supra*, we denied a carload rating on wool and hair press cloth, saying, at page 35:

To single out Atlanta and apply carload rates to that city from Houston Heights without making them generally applicable would be to give that city an undue preference and would subject complainant's competitors, who ship to that city on any-quantity rates, to disadvantage and prejudice which the record herein can not justify.

We now have before us a more comprehensive record and the issues have been broadened, and that objection to the establishment of a carload rating does not now hold.

Cotton press cloth, as stated, was rated fourth class any quantity in southern classification, and, effective August 15, 1920, the rating became first class. Prior to 1900 it had no specific rating. It was then provided for under the description of mats, oil press, and was given the first-class rating applicable to mats, not otherwise specified, and to cotton goods generally. Subsequently, cotton goods in the original piece, including cotton press cloth, were accorded a rating of fourth class for the purpose of stimulating and fostering the cotton spinning industry in the south. The defendants claim that the passing of conditions which originally led to the establishment of the fourth-class rating on cotton piece goods warranted a revision of the classification to the first-class basis. Cotton fabrics move to-day in very large volume throughout the south under class rates, and in some instances under carload and less-than-carload commodity rates lower than the class rates.

Hair and wool press cloth and cotton press cloth are generally interchangeable as to use. Complainants in these proceedings urged at the hearing that the maintenance of the first-class any-quantity rating on the hair and wool press cloth is unduly prejudicial to that commodity and the manufacturers thereof by comparison with the effective lower rating on the cotton cloth. In the cottonseed-oil industry, where press cloth finds its greatest use in the south, the hair and wool greatly predominate over cotton as press cloth materials. Not more than 10 per cent of the press cloth used in a cottonseed-oil mill is made of cotton. One roll of hair cloth, because of its greater strength and resistance, will perform the work of from one and one-half to two rolls of the cotton cloth. At the prices prevailing when the hearings were held cotton press cloth was worth from 80 to 85 cents a pound and the wool and hair press cloth from 85 cents to \$1.25 a pound and at these prices the latter is said to be more economical. Cotton press cloth is more susceptible to loss and damage in transit than wool or hair press cloth. It is readily in-

jured by water, by contamination, or by fire. Wool or hair press cloth is repellant of moisture, is not, as a rule, contaminated by contact with other commodities, and does not burn readily.

The defendants urge that the volume of movement of wool and hair press cloth does not justify the establishment of carload rates. On this point what we said in *Brunswick-Balke-Collender Co. v. C. G. W. R. R. Co.*, 56 I. C. C., 340, is apposite. Volume of movement is not determinative of the right to a carload rating.

In the *Western Classification Case*, 25 I. C. C., 442, 465, we said:

Assuming a proper relation between carload and less-than-carload rates, the establishment of carload ratings whenever carload quantities are offered will, we believe, meet the needs of new and growing lines of industry without discrimination.

Nor, to entitle a commodity to carload rating, must it be shown that increased movement in carload quantities would result. The movement in carloads results in economy of transportation facilities, and is therefore greatly to be desired in the interests of the public as well as of the carriers. *Brunswick-Balke-Collender Co. v. C. G. W. R. R. Co.*, *supra*.

In the *Southeastern Sugar Cases*, 48 I. C. C., 739, 747, we pointed out that a narrow spread between the carload and less-than-carload rates tends to the waste of transportation facilities without adequate compensating advantages to the general public, and is not to be encouraged. Any-quantity rates reduce the spread to nothing.

Complainants in the two cases before us contend that the rates on press cloth from Houston to points in the southeast are unreasonable and unduly prejudicial in comparison with the rates from New York. First-class rates now apply on any quantity from Houston.

The first-class rates from Houston and New York to a few representative southeastern points, with the distances, are set out below. The rates from Houston are on the basis of the lowest combinations on the Mississippi River. Rates stated herein are in amounts per 100 pounds and are those in effect prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

To—	From Houston.		From New York.			
	Dis- tances.	Rates.	Rail-and-water.		All-rail.	
			Dis- tances.	Rates.	Dis- tances.	Rates.
Atlanta, Ga.	Miles. 555	\$2.455	Miles. 509	\$1.50	Miles. 878	\$1.575
Macon, Ga.	577	2.455	423	1.44	935	1.515
Columbia, S. C.	1,113	2.555	379	1.275	705	1.35
Birmingham, Ala.	782	2.33	678	1.685	982	1.64
Selma, Ala.	674	2.225	638	1.565	1,103	1.64

¹ Based on 290 miles to Savannah, Ga., or Charleston, S. C.

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The record recites at length the history of the rates from the east to the southeast, showing how they had been controlled and depressed by the water-and-rail routes. The dominating influence of the water-and-rail routes over the rates to the southeast has been frequently pointed out in our reports. In *Receivers & Shippers Asso. v. O., N. O. & T. P. Ry. Co.*, 18 I. C. C., 440, 453, we said that the all-rail rates from eastern points of origin can not properly be compared with all-rail rates from the west to corresponding destinations in the south. In *The Fifteen Per Cent Case*, 45 I. C. C., 808, authority was given to increase the ocean-and-rail rates, which were then 12 cents, first class, lower than the all-rail rates, to the all-rail basis. The carriers, however, increased the first-class rates only to the extent of one-half the differential, or 6 cents, which subsequently became 7.5 cents under general order No. 28 of the Director General of Railroads.

Although the distance from Houston to Atlanta, the point principally discussed on the record, is slightly less than the distance all-rail from New York, it is considerably longer than the distance computed by prorating ocean mileages according to the formula used in constructing through distances to the southeast. Substantially all of the press cloth shipped from the eastern seaboard into the southeast moves via these ocean-and-rail routes.

The rate of \$2.465 on press cloth from Houston to Atlanta, applicable over the standard routes, is made by combination of the first-class rates of \$1.115 to New Orleans, which is also applicable to Vicksburg as a proportional rate, and \$1.34 beyond. The class rates to Houston from New Orleans were considered and approved in *New Orleans-Texas Rates*, 88 I. C. C., 1. The first-class rate from Atlanta to Houston is \$1.915, or 54 cents lower than the rate eastbound. The defendants account for this by the different methods used in constructing the rates, those eastbound being combinations on the Mississippi River and those westbound related to the rates from St. Louis. Because of this disparity press cloth may be shipped from Atlanta or other points in the southeast, such as Macon, Columbia, and Augusta to Houston, at substantially lower rates than apply on the same traffic originating at Houston and shipped into the southeast. Press cloth is manufactured at Columbia and Augusta, from which points the first-class rates to Houston are 35.5 and 48 cents, respectively, lower than the rates from Houston to Columbia and Augusta. The fact that the first-class rates to Houston from Columbia and Augusta, where press cloth is manufactured, are lower than those eastbound from Houston is not conclusive that the rates from Houston are unreasonable. No movement of hair and wool press cloth is shown from any point in the southeast to Houston, or from Columbia to any points in Texas. The movement from Augusta

to the state of Texas apparently does not exceed from 16,000 to 20,000 pounds a year.

For many years, as we have shown, the manufacturer at Houston was accorded carload rates to Mississippi River crossings, which were available for use in combination with the any-quantity rates east of the river in forming through rates. In August, 1904, a rate of 25 cents was established from Houston to New Orleans on press cloth in carloads to assist in developing the plant at Houston, and about a year later a rate of 28 cents was published to Vicksburg and Memphis. On June 24, 1918, the rate from Houston to the three points named was 40 cents, which was increased to 50 cents on June 25, 1918, under general order No. 28. The distances from Houston are: To New Orleans 357 miles, to Vicksburg 401 miles, and to Memphis 600 miles. The rates to New Orleans and Vicksburg were canceled in February, 1919, in so far as they applied over lines under federal control, followed in August, 1919, by the cancellation of the rate to Memphis. On July 28, 1920, there became effective the cancellation of the 50-cent carload rate to New Orleans and Vicksburg applicable over routes composed in part of carriers that had not been under federal control.

Complainants present a long list of commodities on which commodity rates ranging from 18.5 to 50 cents are in effect from Houston to New Orleans. Some 225 commodity rates, none exceeding 50 cents, are also shown as applying from New Orleans and Vicksburg to Houston. In addition, they submitted a list of commodities manufactured or produced in Texas on which proportional rates have been established to New Orleans or Vicksburg on traffic destined to the southeast. It is argued that the manufacturer of press cloth at Houston is equally entitled to proportional rates to enable him to meet in the southeast the competition of other manufacturers of the same commodity. The record is silent as to the circumstances which led to the establishment of these various commodity rates and the volume of traffic moving thereunder.

The use of any-quantity rates from New Orleans and other Mississippi River crossings to Atlanta and the southeast in combination with the carload rates to the river previously maintained, but now canceled, was alleged to be unduly prejudicial to the shipper at Houston and unduly preferential of his New Orleans competitor. It was argued that under rates so constructed the Houston shipper was required to pay for the haul from New Orleans the same any-quantity rate that is charged on shipments originating at New Orleans although the services rendered by the carriers on the local shipments from New Orleans exceeded that performed in the case of the through shipments from Houston. Particular reference was made to

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Mutual Rice Trade & Devel. Asso. Houston v. I. & G. N. R. R., 23 I. C. C., 219. There we considered the propriety of through rates on rice from Texas points to destinations in the southeast, made by combination of carload rates to New Orleans and any-quantity rates beyond. In consideration of the facts that all the shipments of rice from the Texas points were made in carload lots; that on a through carload shipment from Houston practically no terminal service was performed at New Orleans; and that the New Orleans shipper of less-than-carload lots thus received a greater service for the rate paid, we concluded that joint carload rates should be established from Houston at least 5 cents less than the lowest combinations of carload and any-quantity rates.

Upon consideration of the record in these proceedings we find that the first-class any-quantity rates applicable on hair and wool press cloth from Boston, Mass., New York, N. Y., Philadelphia, Pa., and points named in defendants' tariffs as taking the same rates or arbitraries higher to points in the southeast; between points in the state of Texas and points in the southeast; and between points in the southeast are not shown to be unreasonable or unduly prejudicial when applied to less-than-carload shipments, but we find that said rates are, and for the future will be, unreasonable when applied to shipments of hair and wool press cloth, in carload lots of 30,000 pounds or more from and to said points. We further find that reasonable maximum rates on hair and wool press cloth, in carloads, from and to the aforesaid points are and will be the contemporaneously maintained third-class rates, minimum 30,000 pounds, subject to rule 34 of the consolidated classification.

An appropriate order will be entered.

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**INVESTIGATION AND SUSPENSION DOCKET NO. 1967.
CLASS AND COMMODITY RATES BETWEEN OHIO RIVER
CROSSINGS AND CUMBERLAND RIVER LANDINGS.**

Submitted January 14, 1921. Decided March 12, 1921.

Proposed increased interstate joint and proportional rail-and-water class and commodity rates between Ohio River crossings and related points and landings on the Cumberland River, via Burnside, Ky., found not justified. Suspended schedules ordered canceled.

Charles J. Rivey for Cincinnati, New Orleans & Texas Pacific Railway Company, Southern Railway Company, and Cincinnati, Burnside & Cumberland River Railway Company; and *Harry L. Means* for Cumberland Transportation Company, respondents.

A. F. Vandergrift for Louisville Board of Trade; *F. M. Renshaw* for Cincinnati Chamber of Commerce; *E. L. German* for Bourbon Stock Yards; *Morgan J. Parlin* for Belknap Hardware & Manufacturing Company; and *H. A. Moss* and *H. L. Stark* for Louisville Cooperage Company, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

By schedules filed to become effective December 29, 1920, respondents propose to increase their joint and proportional rail-and-water class and commodity rates applying on interstate traffic between Ohio River crossings and related points and landings on the Cumberland River, via Burnside, Ky. Upon protest of the Louisville Board of Trade the schedules were suspended until May 28, 1921. Rates will be stated in cents per 100 pounds.

The points between which the proposed rates would apply are Cincinnati, Ohio; Evansville, Ind., and from or for beyond New Albany and Jeffersonville, Ind.; Louisville, Lexington, Nicholasville, Wilmore, Danville, and Junction City, Ky., and Oneida, Tenn., on the one hand, and on the other landings on the Cumberland River below Burnside to and including Myer's Landing, Tenn., in connection with the Cumberland Transportation Company, Incorporated I. C. C.

rated, hereinafter called the Cumberland line. The following table shows the present and proposed grouping of these landings:

Present grouping.	Landings.	Distance from Burnside.	Proposed grouping.
		Miles.	
Group No. 1.	Walton, Ky.	3	Group No. 1.
	Lock No. 21, Ky.	20	
	Cummers, Ky.	28.5	Group No. 2.
	Albany Landing, Ky.	77	
Group No. 2.	Phelps, Ky.	79	Group No. 3.
	Bluffs, Ky.	107.5	
	Mud Camp, Ky.	108.5	Group No. 4.
	Myer's Landing, Tenn.	161.5	

In *Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co.*, 37 I. C. C., 463, decided December 24, 1915, we required the defendants to establish through routes and joint rates with the Cumberland line between landings on the Cumberland River in Kentucky and Tennessee and interstate points on defendants' lines corresponding with those maintained by them in connection with the Burnside & Burkesville Transportation Company, hereinafter called the Burnside line. Many of the facts therein stated are pertinent here but need not be repeated. Since then the capital stock of the Cumberland line has been increased to \$75,000, of which the Cumberland Grocery Company owns 97 per cent. The Burnside line ceased operations in 1917 and at the present time the Cumberland line operates the only boats out of Burnside, and with its three packet boats endeavors to maintain a schedule of two round trips a week between Burnside and Nashville, Tenn., during the season of navigation, although there are periods when, on account of water conditions, it makes only one.

The Nashville Navigation Company, an independent corporation, the stock of which is owned by commercial interests of Nashville, now operates the only boat up the river from Nashville towards Myer's Landing, but publishes no rates. The Cumberland line publishes local rates from Nashville and Burnside to Cumberland River landings in addition to the joint rates above referred to. Traffic may also reach these landings by wagon or truck from such interior rail-line points as Glasgow, Campbellsville, and Somerset, Ky., on the north, and Double Springs and Livingston, Tenn., on the south, as well as from Burnside. The wagon or truck charges apply alike to all classes of traffic and in 1920 ranged from 15 cents from Burnside to 50 cents from Campbellsville. Respondents state that their present joint rates, as well as those proposed, are constructed with a view to keeping their route via Burnside on a competitive basis with the

routes through Nashville and the interior points; that the present joint rates are depressed and that full combinations should apply, as that basis, generally speaking, is in effect to river landings. Respondents' present and proposed joint rates are lower than the combinations based on Nashville, the interior rail-line points, or Burnside, but no evidence was introduced as to the tonnage moving by boat through Nashville or Burnside, or over the wagon routes. Louisville, which takes the same rates as Cincinnati and is the pivotal Ohio River crossing in this adjustment, is used throughout the record for illustrative purposes. Traffic from Louisville to Cumberland River landings moves by rail over the Southern to Danville and the Cincinnati, New Orleans & Texas Pacific to Burnside; and in river boats of the Cumberland line beyond.

The following table shows the changes in class rates from Louisville to Burnside 144.8 miles, and to the groups of landings from December 22, 1913, to the present as compared with the proposed class rates:

	Dates effective.	Class rates per 100 pounds. ¹									
		1	2	3	4	5	6	A	B	C	D
From Louisville to—		<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
Burnside.....	Dec. 22, 1913	55	46	43	32	29	26	20	25	26	16.75
Group 1.....		64	54	50	33	35	32	25	31	25	23
Group 2.....		70	60	56	44	41	38	30	36	30	27
Burnside.....	Jan. 1, 1916	62	54	47	40	34	28	23	27	21	17
Group 1.....		64	54	50	40	35	32	25	31	25	23
Group 2.....		70	60	56	44	41	38	30	36	30	27
Burnside.....	May 20, 1918	62	54	47	40	34	28	23	27	21	17
Group 1.....		69	59	55	43	40	37	29	35	29	26
Group 2.....		70	60	56	44	41	38	30	36	30	27
Burnside.....	June 25, 1918	77.5	67.5	59	56	42.5	35	29	34	23.5	21.5
Group 1.....		84.5	74	69	54	50	45.5	35.5	44	32.5	32.5
Group 2.....		87.5	75	70	55	51.5	47.5	37.5	45	37.5	34
Burnside.....	Aug. 26, 1920	97	84.5	74	62.5	53	44	36.5	42.5	33	27
Group 1.....	(Present rates.)	108	92.5	85.5	67.5	62.5	58	45.5	55	45.5	40.5
Group 2.....		109.5	94	87.5	69	64	59.5	47	54.5	47	42.5
From groups 1 and 2 to—											
Louisville.....	.....do.....	97	84.5	74	65.5	62.5	58	45.5	70.5	38.5	38.5
Between Louisville and—											
Groups 1 and 2.....	Proposed rates.	122	109.5	99	87.5	78	69	61.5	67.5	53	52
Group 3.....		123	115.5	105	94	84.5	75	67.5	74	64.5	58
Group 4.....		134.5	122	111.5	100	90.5	81.5	74	80	70.5	64.5

¹ The rates shown to Burnside are local rail rates; 60 the respective groups, joint rates.

² Carloads.

The increases shown above were made as follows: January 1, 1916, following our order in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153; May 20, 1918, under authority of our Fifteenth Section Order No. 549, in which proceeding petitioners sought to increase their rates to the river landings in group 1 only "in order to more nearly align them with the advanced rates to Burnside proper effective January 1, 1916"; June 25, 1918, under general order No. 28 of the Director General of Railroads; and August 26, 1920, under *Increased Rates*, 58 I. C. C., 220.

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In constructing the proposed class rates, respondents first divided the present group 2 into three groups, as previously shown; added to the rail rates in effect August 25, 1920, from Louisville to Burnside a differential of 15 cents on all classes to group 1, representing the average competitive wagon or truck charge, and made the new groups 2, 3, and 4 differentials of 5 cents each successively over the preceding group. The rates to the new group 2 thus became 20 cents over the rates to Burnside; the revised rates to group 2 were then made applicable also to group 1, and the 25 per cent increase authorized in *Increased Rates, 1920, supra*, was then added.

While respondents' present class rates from Lexington, Nicholasville, Danville, Junction City, and Oneida to Cumberland River landings are on a basis lower than from Louisville and Cincinnati, their proposal includes increasing them to that basis, but not exceeding the combinations on Burnside.

On some commodities the increases proposed correspond generally with those proposed in the class rates, but on others the percentages of increases are considerably greater.

Respondents endeavor to justify the proposed increases largely, if not altogether, upon the claim of the Cumberland line that it is operating at a loss under the present rates and that if we do not permit the proposed increases to become effective it will be compelled to discontinue operation because it can not further increase its existing deficit. They introduced statements indicating that for the years 1917, 1918, 1919, and 1920 the Cumberland line suffered an average yearly loss of \$10,405.97, in addition to an estimate of \$10,000 to raise, repair, and pay loss and damage claims incident to the sinking of the steamer *Celina* at Lock No. 21 on December 21, 1920. They claim that the operating deficit is due principally to increased costs and lay particular stress on the percentage of increases in the cost of materials, supplies, and wages for 1920 over 1916 and inability to operate the boats continuously during the short season of navigation. The operating costs are high because it is necessary to maintain practically full crews and incur other expenses while the boats are lying idle.

Protestants contest the cost figures of respondents on the ground that in 1920 all costs had reached their peak, and assert that the continued general decline in prices is a matter of common knowledge and that the proposed rates, based on such comparisons, are not justified. Respondents admit that as to certain items the boat line, at the time of the hearing in January, 1921, was not paying prices as high as the averages shown in their exhibits. We are urged to take into consideration the respective increases in these rates since 1913, and the fact that the competing boat lines have

ceased operations. Unaccompanied by evidence as to similarity of transportation conditions, protestants show that the proposed rates are higher for the maximum distance of 306.5 miles, Louisville to Myer's Landing via Burnside, than those for the 1,115 miles from Louisville to New Orleans by rail to Memphis, Tenn., and Mississippi-Warrior Service beyond.

The evidence for respondents with reference to the financial condition of the Cumberland line covered all operations and no effort was made to show the expenses chargeable to the service under consideration here. The Cumberland line has filed no annual reports with us except for the year ended December 31, 1916, but we have received a return from it showing net operating revenue for the year 1919 of \$4,842.55. Respondents submitted no statement of the amount of additional revenue that the boat line had received or estimated that it would receive under the 25 per cent increase effective August 26, 1920. A 25 per cent increase applied to the Cumberland line's total freight and passenger revenue for 1920 would amount to about \$26,000 and the Cumberland line handled approximately 30 per cent more tonnage to river landings from Louisville through Burnside from February to May, 1920, inclusive, than for the corresponding months of 1919. The proposed percentage divisions agreed upon by the rail and Cumberland lines, which are not before us for determination in this case, would produce substantial additional revenue for the rail lines under the proposed rates, but they submitted no estimate of its amount.

We have given due consideration to respondents' comparisons of their proposed rates and respective divisions thereof with joint and local rail rates from Ohio River crossings for like distances. The Cincinnati, New Orleans & Texas Pacific and the Cumberland line interchange carload and less-than-carload freight at Burnside substantially as described in *Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co.*, *supra*, except that the Cumberland line now has the use of the facilities formerly reserved to the Burnside line. Respondents contend that the cost of handling this interchanged traffic is greater than on local traffic, but submitted no proof as to the difference, if any, in such costs.

Respondents propose to cancel, from certain rail-line points to group landings, commodity rates on agricultural implements, boilers and engines, canned goods, egg cases, grain and grain products, and machinery, leaving higher class rates in effect; on brick and wagons, leaving higher combination rates in effect; and on iron and steel articles, leaving higher special iron rates in effect. They further propose to cancel, from group landings to certain rail-line points, commodity rates on corn, fruit, and watermelons, leaving higher

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class rates in effect; and on lumber, vehicle material, and handles, leaving higher combination rates in effect. Respondents seek to justify their action in this respect on the ground that upon investigation of their records for about one year it developed that there were no carload movements of those commodities. Protestants admit that there are perhaps no regular movements, but contend that there are occasional movements and that we should not permit the joint commodity rates to be canceled.

The suspended schedules also contain proposed changes in rules relating to the application of rates to intermediate landings, minimum charges on less-than-carload shipments and on heavy articles, effecting substantial increases, but respondents offered no justification therefor.

We find that the schedules under suspension have not been justified and must be canceled. It will be so ordered.

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No. 11476.
PEQUEST COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted February 14, 1921. Decided March 17, 1921.

Rate charged on iron ore, in carloads, from Pohatcong Railroad interchange tracks near Oxford Furnace, N. J., to Oxford Furnace, found to have been unreasonable. Reparation awarded.

Parsons, Closson & McIlwaine and T. C. Richards for complainant.
John F. Finerty and W. J. Larrabee for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

CLARK, *Chairman.*

The issues here presented were made the subject of a proposed report by the examiner, to which no exceptions were filed.

Complainant is a corporation engaged in mining and selling iron ore at Oxford Furnace, N. J. By complaint filed May 13, 1920, it is alleged that the rate charged for the transportation of eight carloads of iron ore from the interchange tracks of the Pohatcong Railroad, at or near Oxford Furnace, to the siding of the Empire Steel & Iron Company at Oxford Furnace, from August 1, 1919, to August 15, 1919, was unjust and unreasonable. Except as otherwise noted, rates herein are stated in cents per long ton.

Complainant's mines are located on the Pohatcong Railroad about 1 mile from its junction with the Delaware, Lackawanna & Western Railroad, hereinafter termed defendant, at or near Oxford Furnace. In handling complainant's traffic a switch engine of the Pohatcong Railroad brings the cars from the mines to its interchange tracks at the aforesaid junction point. The cars are picked up at this point by one of defendant's engines, weighed on near-by scales, and then moved along defendant's main line to the interchange tracks of the Empire Steel & Iron Company at Oxford Furnace. The total length of the movement is about 5,580 feet. The shipments aggregated 831,900 pounds, and charges were collected at the applicable commodity rate of 60 cents. Prior to June 1, 1917, the rate on this traffic was 15 cents. On that date it was increased to 30 cents. Effective June 25, 1918, it was increased to 60 cents, pursuant to general

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order No. 28 of the Director General of Railroads. On August 26, 1919, subsequent to movement of the shipments involved, a switching charge of \$7.50 per car was established and reparation on that basis is asked.

In support of the allegation of unreasonableness complainant lays stress upon the subsequent reduction of the rate, and the fact that at the time of movement defendant maintained a switching charge of \$5 per car on limestone from and to the points covered by this complaint. Complainant cites rates and charges contemporaneously in effect on other lines for service similar to that performed by defendant in connection with these shipments, ranging from 15 cents to 17 cents for comparable distances. It contends that the service performed was a switching service for which a switching charge instead of a line-haul rate should have been maintained.

Crude iron ore is classified in official classification as sixth class. Under general order No. 28 the minimum sixth-class rate was 7 cents per 100 pounds, and the rate of 60 cents was less than half the minimum class rate. Defendant contends that a line-haul service was rendered. The record indicates that these shipments were handled in so-called "extra trains" which were run only when there were cars of ore or limestone to be moved from the tracks of the Pohatcong Railroad.

It is asserted for defendant that the establishment of the charge of \$7.50 per car on this traffic was based on an understanding that complainant contemplated a movement of about 135,000 tons of ore; and that the 60-cent rate was considered unreasonable in comparison with the per-car charge of \$5 contemporaneously in effect for a like movement of limestone. No attempt was made by defendant to show the cost of service.

We find that the rate assailed was unreasonable to the extent that it exceeded \$7.50 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged and is entitled to reparation in the sum of \$162.82, with interest.

An appropriate order will be entered.

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No. 11219.

SINCLAIR REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted October 23, 1920. Decided March 5, 1921.

Rates on spent sulphuric or sludge acid in tank-car loads from Arkansas City, Eldorado, Augusta, and Wichita, Kans., to Coffeyville, Kans., found to have been unreasonable. Reparation awarded.

Clifford Thorne and Walter R. Scott for complainant.
F. E. Andrews, T. J. Norton, and A. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATCHISON.

BY DIVISION 1:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued before us.

Complainant is a corporation engaged in the manufacture of acid at Coffeyville, Kans. By complaint filed February 7, 1920, as amended, it seeks reparation on 44 tank-car loads of sludge acid shipped over intrastate routes from Arkansas City, Eldorado, Augusta, and Wichita, Kans., to Coffeyville, Kans., during the period from June 25, 1917, to December 4, 1918, alleging that the rates charged were unreasonable. Three of the shipments moved prior to the period of federal control, are not within our jurisdiction, and therefore will not be considered. Rates will be stated in cents per 100 pounds.

The shipments under consideration consisted of spent sulphuric or sludge acid. Those from Augusta moved over the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, 158 miles. Those from Arkansas City moved over the Missouri Pacific, 100 miles; and those from Eldorado and Wichita over either the Santa Fe, 151 and 145 miles, respectively, or the Missouri Pacific, 138 and 163 miles, respectively. Charges were collected at rates ranging from 17 to 38 cents. In the absence of commodity rates or a specific class rating on spent sulphuric or sludge acid the rates applicable were the fourth-class rates on sulphuric acid. These rates were 23 cents from Arkan-

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sis City and 28 cents from the other three points on shipments that moved prior to June 25, 1918; and 29 and 35 cents, respectively, on and after that date, the latter rates representing a 25 per cent increase following general order No. 28 of the Director General of Railroads.

Spent sulphuric acid or sludge acid is sulphuric acid which has been used for the purpose of "sweetening" petroleum distillates, and contains impurities drawn from the distillates. It is black in color, resembling fuel oil, and weighs about 18.8 pounds per gallon. Its average value is stated to be about \$10 per car, or approximately 33 cents a ton, that being the price paid for the shipments here considered. Sulphuric acid is naturally colorless, and weighs about 15.3 pounds per gallon. The value of sulphuric acid fluctuates. At the time of hearing it ranged from \$22 to \$24 a ton at point of shipment.

Before complainant began making shipments to Coffeyville it requested defendant carriers to publish commodity rates on sludge acid from Augusta and Arkansas City. The Western Trunk Line Committee recommended the establishment of a rate of 9 cents, subject to the approval of the Kansas Public Utilities Commission, but this rate was never published. A commodity rate of 12.5 cents from all four points of origin to Coffeyville was established over the Missouri Pacific on December 2, 1918, and over the Santa Fe on December 15, 1918.

Complainant contends that the rates assailed were unreasonable to the extent that they exceeded 10 cents prior to June 25, 1918, and 12.5 cents after that date, the latter rate being 10 cents plus the increase authorized in general order No. 28 of the Director General. Rates of 10 cents prior to June 25 and 12.5 cents on and after that date were in effect from Coffeyville to Arkansas City. Rates from a number of Kansas points other than Coffeyville to Arkansas City the same as those sought by complainant were also maintained by defendants when the shipments moved for distances ranging from 7 miles to 169 miles.

While sludge acid is a low-grade commodity, the car-mile earnings under the rates assailed exceeded the average car-mile earnings of defendants both on intrastate traffic in Kansas and on all traffic handled by them for the year ended December 31, 1917.

Commodity rates on sludge acid from and to points in Kansas and between Kansas City, Mo., and Coffeyville, average about 54.5 per cent, and between Kansas and Oklahoma points about 50.5 per cent, of the rates on sulphuric acid applying in the same or the opposite direction. The present rate of 12.5 cents from and to the points in question is from 55 to 58 per cent of the sulphuric-acid rates applying in the same or the opposite direction. The ton-mile earnings

under the 10-cent rate would be 14.8 mills, and under the 12.5-cent rate 17.9 mills, over the routes the shipments moved, an average distance of 139 miles.

We find that the rates applicable to complainant's shipments were unreasonable to the extent that they exceeded 10 cents prior to June 25, 1918, and 12.5 cents thereafter; that complainant made the shipments as described, and paid and bore the charges thereon at the rates herein found unreasonable, and has been damaged to the extent that the charges paid exceeded those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should comply with rule V of the Rules of Practice.

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No. 10792.

JOSEPH L. LIEBERMAN IRON COMPANY

v.

DIRECTOR GENERAL, WABASH RAILWAY COMPANY,
ET AL.

Submitted October 22, 1920. Decided March 5, 1921.

Rate charged on 20 carloads of scrap iron and iron turnings from Detroit, Mich., to Granite City, Ill., and St. Louis, Mo., found to have been legally applicable. Complaint dismissed.

John Andrew Ronan for complainants.*L. H. Strasser* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

Exceptions were filed by complainants to the report proposed by the examiner.

Moses L. Lieberman, Joseph Lieberman, and Jacob Lieberman, copartners trading under the name Joseph L. Lieberman Iron Company, and engaged in buying, selling, and shipping scrap iron and steel, with general offices at Chicago, Ill., by complaint seasonably filed, as amended, allege that the rate charged by defendants on 20 carloads of scrap iron and iron turnings shipped from Detroit, Mich., to Granite City, Ill., and St. Louis, Mo., between August 21 and November 17, 1916, was illegal. It was further alleged that the rate charged was in violation of sections 1, 2, and 3 of the act to regulate commerce, but at the hearing no evidence was offered in support of these allegations and the issue was narrowed to one of tariff application and interpretation. We are asked to award reparation. Rates herein will be stated in amounts per gross ton.

Of the shipments 11 were forwarded from Detroit by the Michigan Central, 8 by the Grand Trunk, and 1 by the Detroit & Toledo Shore Line, on bills of lading made out by the shippers and routed "Via Wabash R. R." Charges were collected at the rate of \$2.94, applicable both to scrap iron and to iron or steel turnings. The Wabash, which delivered all of the shipments, also reaches Detroit, and at the time of movement had in effect a rate on scrap iron and steel, and iron and steel billets, of \$2.10 from and to these points. Complainants' contention that this rate was also applicable to turnings is not

supported by the tariff. The Detroit & Toledo Shore Line, Grand Trunk, and Michigan Central were named in the list of participating carriers in the Wabash tariff, the first two under concurrence form FX-3 and the latter under form FX-4. The tariff contained no routing instructions, and complainants insist that the \$2.10 rate was legally applicable to the shipments in question.

We have prescribed several forms of concurrences. Form FX-3, under which the Detroit & Toledo Shore Line and the Grand Trunk were shown as parties to the Wabash tariff, evidences participation in rates applying to and via, but not from points on the concurring line. Form FX-4 may be qualified in various ways. In this particular instance, the concurrence of the Michigan Central was so limited as not to make it a party to rates from points on the Wabash.

Complainants call attention to the general rule that, in the absence of routing directions, the rates named in joint tariffs apply between points specified via the lines of any and all carriers parties thereto. Counsel for complainants also points out that neither our tariff circulars nor the concurrence sheets filed by carriers are required to be posted in the same manner as tariffs, and argues that even though reference to our Tariff Circular 18-A indicated definitely the extent of the carrier's participation under form FX-3, this is not true with respect to form FX-4; and under the latter form it is necessary to examine the concurrence itself, which is filed only with us and in the general offices of the publishing and concurring carriers.

In *Healy & Fowler v. C. & N. W. Ry. Co.*, 43 I. C. C., 88, we said:

Concurrence sheets are not posted in the same manner as are tariffs, and no opportunity is afforded the general public to ascertain whether or not the terms of the concurrence limit the application of the tariff in so far as the participating road is concerned. The tariff of the North Western offered to the public a rate of \$82.50 per car on horses from South Omaha to Wausau over the route of movement, and as to the shipments from that point the \$82.50 rate must be protected.

In that case the shipper claimed protection of the rate named in the tariff of the carrier to which he delivered the traffic, whereas, in the instant case, complainant asks that rates named in the tariff of the Wabash, the terminal carrier, be applied on traffic which originated on other lines. It is well settled that the interstate shipper is liable to pay the rate fixed by the printed and published schedules of the carrier on file with us. The Wabash tariff in question was not, nor was it required to be, posted at the stations of any of the carriers on whose lines these shipments originated.

We find that the rate of \$2.94 named in the tariffs of the originating carriers was legally applicable to the shipments here considered.

The complaint will be dismissed.

No. 10591.

W. H. BARBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC COAST
LINE RAILROAD COMPANY, ET AL.

Submitted October 22, 1920. Decided March 5, 1921.

Rates on rosin and turpentine from Perry, Athena, Carbur, and Salem, Fla., to Chicago, St. Paul, Minneapolis, and other points in Illinois, Wisconsin, Minnesota, Iowa, and states west thereof found to be not unreasonable but unduly prejudicial. Reparation denied and nonprejudicial rates prescribed for the future.

Borders, Walter & Burchmore and *Nuel D. Belnap* for complainants.

Frank W. Gwathmey for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

By DIVISION 1:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued by the parties before us.

Complaint was filed April 24, 1919, by the W. H. Barber Agency Company. By amendment, the W. H. Barber Company, a corporation engaged at Minneapolis and Chicago in jobbing rosin and turpentine and the successor in interest of the W. H. Barber Agency Company, was substituted as complainant. It alleges that the rates on rosin and turpentine, in carloads, from Perry, Athena, Carbur, and Salem, Fla., to Chicago, Ill., St. Paul and Minneapolis, Minn., and other points in the states of Illinois, Wisconsin, Minnesota, Iowa, and states west thereof, were and are unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act, and unduly prejudicial to Perry, Athena, Carbur, and Salem and preferential of New Orleans, La., Pensacola and Jacksonville, Fla., and Savannah, Ga. We are asked to award reparation on all shipments that moved during the statutory period and to establish maximum rates for the future. Rates herein will be stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

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Perry, Athena, Carbur, and Salem are on a branch line of the Atlantic Coast Line Railroad, an average distance of about 150 miles west of Jacksonville and near the Gulf coast. Perry is the terminus of the branch line. Complainant's shipments moved over the Atlantic Coast Line easterly through Newberry, Fla., northerly through Dupont, Ga., and westerly through Quitman, Ga., to Montgomery, Ala., Louisville & Nashville Railroad and other connecting lines to St. Louis, Mo., Chicago, Ill., Milwaukee, Appleton, Menasha, Fox River, and La Crosse, Wis., Waterloo and Sioux City, Iowa, Omaha, Nebr., Grand Rapids and Kalamazoo, Mich. All of the participating carriers are named as defendants except the Michigan Central Railroad. At the hearing complainant sought to amend the complaint to include destinations in Michigan, and to include the Michigan Central as a defendant. The amendment is refused.

The shipments did not move through Jacksonville, although a longer route of the Atlantic Coast Line through Newberry, Jacksonville, and Dupont was available. The route of movement is slightly longer than the distances from Jacksonville to all of these destinations, but the short-line route from Athena, Carbur, and Salem is less than the distance from Jacksonville, and is through Perry, where the South Georgia Railroad connects with the Atlantic Coast Line, and over the former line through Quitman, Ga., where it connects with the main line of the Atlantic Coast Line between Jacksonville, Dupont, and Montgomery.

Through rates from Athena, Carbur, and Salem and other interior points in Florida south of the line of the Seaboard Air Line Railroad from Jacksonville through Lake City are generally based on the distance rates to Jacksonville plus the joint or combination rates from Jacksonville to interstate points beyond. The factors from Carbur and Salem to Jacksonville are 13 cents on rosin and 27.5 cents on turpentine, and from Athena to Jacksonville 13.5 cents on rosin and 29 cents on turpentine, and include the 25 per cent increases established pursuant to general order No. 28 of the Director General of Railroads. The rates on which these factors were built were fixed by the Railroad Commission of Florida, and had been in effect for a number of years. From Jacksonville there are joint through commodity rates to Chicago on rosin, and like rates on rosin and turpentine to the Ohio River crossings and the Mississippi River crossings, St. Louis and East St. Louis. These rates are added to the local rates from Athena, Carbur, and Salem to Jacksonville in constructing through rates to the points described, although the traffic does not move through Jacksonville. Class rates from the river crossings to points north and west constitute additional factors of through rates from these Florida points.

Florida contributes more than half of the rosin and turpentine produced in the United States, and naval stores are also produced in large quantities in Georgia, North and South Carolina, Alabama, Mississippi, Louisiana, and Texas. Dealers competing with complainant at Minneapolis, St. Paul, and Chicago buy their rosin and turpentine at New Orleans, Pensacola, Jacksonville, and Savannah, in addition to Louisiana and Texas producing points. From some of these sources complainant obtains about half of its supply, the remainder being obtained at the points of origin here considered. Purchase of these commodities is usually made on basis of the Savannah market price, freight rates being taken into consideration at other markets. Representative prices on June 14, 1919, ranged from \$15 to \$16.60, dependent upon grade, for a 250-pound "stand" of rosin, and \$1.08 per gallon of turpentine. Complainant's shipments of turpentine moved in tank cars and averaged 58,000 pounds. The shipments of rosin moved in barrels in ordinary box cars and averaged 62,400 pounds.

Originally turpentine was transported only in barrels. At present most of the turpentine from points in Florida to Jacksonville is shipped in barrels, but the all-rail movement beyond Jacksonville is now in tank cars. Complainant contends that the rates from Carbur and the other points to Jacksonville were made to apply to turpentine in barrels, and that the increased revenue derived from the heavier loading of this commodity when transported in tank cars warrants a lower rate. Admitting that the initial revenue from shipments in tank cars would exceed that for movement in box cars, defendants directed attention to the fact that while there would be return loads for a certain number at least of the box cars, tank cars are usually returned empty to the points of origin, and in addition an allowance of 1 cent a mile is made by defendants to the owners or lessees of the tank cars. For complainant it was testified that the monthly rental which it in turn pays to the owners of tank cars greatly exceeds the amount of the mileage allowance it receives from the carriers.

The bulk of the turpentine and rosin traffic from interior Florida points to Jacksonville heretofore has moved in less-than-carload quantities; and for this reason also complainant contends that the rates to Jacksonville, which are used as factors in making the through carload rates, were not established with regard to the actual movement of the commodities in carloads.

Using Carbur as a representative point of origin, the present rates therefrom and from a number of other points to Chicago, 61 I. C. C.

Cairo, St. Louis, Minneapolis, and St. Paul are compared in the following table, compiled largely from complainant's exhibits:

	Dis- tances.	Rosin.				Turpentine.			
		Rates.		Ton-mile earn- ings.		Rates.		Ton-mile earn- ings.	
		Prior to June 25, 1918.	On and after June 25, 1918.	Prior to June 25, 1918.	On and after June 25, 1918.	Prior to June 25, 1918.	On and after June 25, 1918.	Prior to June 25, 1918.	On and after June 25, 1918.
Carbur to—	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mils.</i>	<i>Mils.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mils.</i>	<i>Mils.</i>
Chicago.....	1,198	37	46	5.2	7.6	62.5	78	10.4	13
Cairo.....	876	39.5	37	6.6	6.4	60	61.5	11.3	14
St. Louis.....	1,027	34.5	43	6.7	8.3	57	71.5	11.1	13.9
Minneapolis-St. Paul....	1,594	51.5	64.5	6.3	8	72.5	90.5	9.1	11.4
Pensacola to—									
Chicago.....	948	30	25	4.2	5.3	31	30	6.5	8.2
Cairo.....	588	15	19	5.1	6.4	23	27.5	7.4	9.3
St. Louis.....	743	17	21.5	4.5	5.8	28	38	7.5	9.4
Minneapolis-St. Paul....	1,319	33	40	4.8	6	40	50	6	7.5
Jacksonville to—									
Chicago.....	1,110	25.5	33	4.5	5.7	40.5	50.5	7.2	9
Cairo.....	759	19	24	5	6.3	27	34	7.1	8.9
St. Louis.....	912	24	30	5.2	6.5	35	44	7.6	9.6
Minneapolis-St. Paul....	1,488	41	51.5	5.5	6.9	53	66.5	7.1	8.9
Newton, Tex., to—									
Chicago.....	1,125	32	40	5.7	7.1	40	50	7.1	8.9
Minneapolis-St. Paul....	1,533	34.5	43	5.1	6.4	46	57.5	6.9	8.6

Complainant contends that the earnings under both the rosin and turpentine rates from Carbur, when compared with the earnings under rates from Pensacola, Jacksonville, and other points, prove that the rates attacked are excessive.

Complainant calls attention to the spread between the rates on rosin from Carbur to Chicago and to Minneapolis and St. Paul. It contends that the earnings on rosin rates to Minneapolis and St. Paul, being higher than those to Chicago, show that the rate structure is at variance with the generally accepted rule that the earnings per ton-mile should decrease with increasing distances. To this defendants answer that in making rates on rosin to Chicago they encountered at that point competition from ocean-and-rail carriers, whereas on turpentine to Chicago and rosin and turpentine to Minneapolis and St. Paul competition from the same source was felt only at the Ohio River crossings, on which turpentine rates to Chicago and rosin and turpentine rates to Minneapolis and St. Paul are based.

Rates on rosin and turpentine from Jacksonville to Ohio River crossings, Mississippi River crossings, and Chicago are explained by defendants as having been depressed through competition between the all-rail and ocean-and-rail carriers. The ocean-and-rail rates from Jacksonville were canceled several months prior to the date this case was heard and up to the latter date had not been re-established; but the corresponding all-rail rates have been continued

in force unchanged except as they have been increased as the result of general order No. 28 of the Director General of Railroads, and our decision in *Increased Rates, 1920, supra*.

The same competitive conditions, defendants state, operated in the past to depress rates from Savannah, Ga. They assert that the rates from Pensacola and New Orleans, in addition to having originally been influenced by the rates established to the west by water carriers via the Mississippi River, were made with regard to the rates from south Atlantic points, such as Jacksonville and Savannah. They contend that because of the materially different conditions surrounding the transportation of traffic in Florida the maintenance of the present factors of the rates up to Jacksonville on turpentine and rosin is justified. It was pointed out that because of its geographical location Florida is a "terminal" state, and carriers operating therein, with the exception of the Florida East Coast Railway, must depend for their revenues almost exclusively on inbound and outbound traffic, while in other states, in addition to such traffic, carriers have the benefit of revenues derived from traffic passing through. The section of the country in which the points of origin are located was further shown to be sparsely populated. On this account there is very little inbound traffic; and the outbound traffic consists almost exclusively of naval stores and lumber. The nature of traffic conditions in the state of Florida has heretofore been the subject of comment in our reports. See *Fla. Fruit & Veg. Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 14 I. C. C., 476; *Same v. Same*, 17 I. C. C., 552.

Defendants showed that the local rates on rosin and turpentine from Athens, Carbur, and Salem to Jacksonville compare favorably with distance rates prescribed by the several state railroad commissions on those commodities in other south Atlantic states, also in Mississippi, Alabama, and Louisiana, for distances ranging from 140 to 170 miles; but naval stores from these points do not move through Jacksonville, the local rates are not separately assailed, and the shipments did not move through Jacksonville.

Complainant suggests that the rates assailed be readjusted upon a basis similar to the adjustment of lumber rates from the same territory. The rates on lumber from points in the vicinity of Perry, Athens, Carbur, and Salem are made 1 cent over rates from Quitman, Ga., an intermediate point by the route of movement, and by the route through Perry and the South Georgia Railroad. The lumber rate adjustment, defendants explained, has resulted from competition between the Atlantic Coast Line, Seaboard Air Line, and independent short lines, such as the South Georgia Railroad and the Live Oak, Perry & Gulf Railroad. It marks a departure from the

rate structure peculiar to Florida, and is confined generally to that part of the state which lies north of the line of the Seaboard Air Line from Jacksonville through Lake City, Fla. Although located south of the line indicated, Perry, Athena, Carbur, and Salem are in territory which on lumber traffic is affected by the competition with the short-line carriers. Perry, for example, is reached by the Atlantic Coast Line, the South Georgia, and the Live Oak, Perry & Gulf. Athena and Salem are approximately 10 and 18 miles, respectively, south of Perry, and Carbur is between them. The rates on rosin and turpentine maintained by the South Georgia Railroad from Perry and stations north thereof to Quitman are lower than the rates maintained by the Atlantic Coast Line Railroad from Perry, Athena, Carbur, and Salem. The rates on naval stores to certain of the destinations here considered are higher from Quitman than from Jacksonville, but the lumber rates from Jacksonville to a number of the destinations are on the Quitman basis, or 1 cent less than the rates on lumber from Perry, Athena, Carbur, and Salem. Defendants, while disclaiming that the rates assailed are unreasonable, offered, prior to the filing of this complaint, to establish specific joint through rates on rosin and turpentine from the four points 3 cents higher than the rates from Quitman on rosin and 6 cents higher on turpentine.

We find that the rates assailed were not and are not unreasonable, but that the rates from Perry, Athena, Carbur, and Salem are and for the future will be unduly prejudicial to those points and unduly preferential of Jacksonville to the extent that they exceed or may exceed the rates on rosin and turpentine from Jacksonville to the same destinations by more than 3 cents and 6 cents per 100 pounds, respectively.

Complainant purchased these shipments f. o. b. points of origin and during the same period was purchasing like commodities f. o. b. Jacksonville and other markets. There is no specific proof that complainant was damaged by reason of the undue prejudice found to exist and reparation is denied.

An appropriate order will be entered.

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No. 10820 (Sub-No. 1).¹

S. SCHWARTZ

v.

TEXAS & NEW ORLEANS RAILROAD COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted August 6, 1920. Decided March 3, 1921.

1. Rate applicable on secondhand boiler flues and tubes, in carloads, from Port Arthur, Tex., to St. Louis, Mo., found unreasonable. Waiver of certain undercharges directed and complaint dismissed.
2. Rate and demurrage charges applicable on a carload of old boilers from Carson, La., to St. Louis, Mo., not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

Edward A. Haid, Arthur E. Haid, and Louis Mayer for complainants.

C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions to the report proposed by the examiner were filed by complainant in Sub-No. 2.

Complainants, S. Schwartz and Jos. Greenspons' Sons Iron & Steel Company, the latter a corporation, are engaged in the scrap-iron business at St. Louis, Mo. By complaints seasonably filed they attack as illegal and unreasonable the freight and demurrage charges assessed by defendants in Sub-No. 1 on two carloads of "scrap iron" shipped from Port Arthur, Tex., to St. Louis, Mo., on October 30 and November 24, 1916, and in Sub-No. 2 on one carload of "scrap iron" shipped from Carson, La., to St. Louis, on August 7, 1917. In Sub-No. 1 we are asked to grant relief from liability for certain unpaid freight charges demanded by defendants, and in Sub-No. 2 we are asked to award reparation. Rates will be stated in cents per 100 pounds.

Of the shipments embraced in Sub-No. 1, the first, weighing 94,200 pounds, consisted of old boiler flues and tubes, and the second, weighing 71,800 pounds, of similar flues and tubes and miscellaneous pieces of iron. Both shipments were billed as scrap iron. Upon

¹This report also embraces No. 10820 (Sub-No. 2), Jos. Greenspons' Sons Iron & Steel Company v. Kansas City Southern Railway Company, Director General, et al.

arrival at St. Louis they were inspected by a representative of the Western Weighing & Inspection Bureau, and the billing was changed. That covering the first shipment was made to read "secondhand boiler flues and tubes," and the second "35,800 pounds of scrap iron and 36,000 pounds of secondhand boiler flues and tubes." A commodity rate of 24 cents, minimum 40,000 pounds, was applicable on scrap iron, in carloads, while the fifth-class rate of 75 cents, minimum 36,000 pounds, applied on boiler flues and tubes, whether new or secondhand. Charges were assessed upon the basis of the changed billing, but after some controversy the shipments were delivered to complainant upon payment of the 24-cent rate and his furnishing bond for the payment of any additional charges which we might find to be due. In *Schwartz v. St. L.-S. F. Ry. Co.*, 51 I. C. C., 145, we found that these flues and tubes were not shown to be scrap iron and that the charges assessed were applicable. The reasonableness of the applicable rate is now brought in issue.

There was contemporaneously in effect from Texas common points, including Port Arthur, to St. Louis a commodity rate of 40 cents, minimum 46,000 pounds, on wrought or cast iron or steel pipe, secondhand, and complainant now contends that this rate was applicable on the flues and tubes, which were of wrought iron. There is a clear distinction in the tariffs between pipe and boiler flues or tubes, and as the fifth-class rate applied specifically on boiler flues or tubes, it and not the 40-cent rate was applicable.

Complainant further contends that the 75-cent rate was unreasonable to the extent that it exceeded approximately one-half of the class rate applicable on new flues and tubes, and refers to the 40-cent commodity rate on secondhand pipe. Contemporaneously there was in effect from St. Louis to Port Arthur a commodity rate of 40 cents, minimum 46,000 pounds, applicable on new pipe and boiler flues or tubes. The present rate northbound applies on secondhand boiler flues and tubes as well as on pipe. Complainant also mentions contemporaneous commodity rates from Texas common points to St. Louis of 33 cents, minimum 30,000 pounds, on scrap lead and zinc; 43 cents, minimum 30,000 pounds, on scrap brass; and 33 cents, minimum 40,000 pounds, on old rails.

The walls of a flue or tube are slightly thinner than those of wrought or cast iron pipe and the pipe will load somewhat heavier, but otherwise there appears to be no substantial difference from a transportation standpoint. Defendants concede that 40 cents, minimum 46,000 pounds, would have been a reasonable rate on the secondhand boiler flues and tubes contained in these shipments.

The shipment embraced in Sub-No. 2 weighed 57,100 pounds and consisted of three old boilers with steel shells. It was billed as scrap

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iron, but upon arrival at St. Louis was inspected and the billing changed to read secondhand boilers. Freight charges of \$399.70 at a rate of 70 cents, for which no tariff authority appears, were collected, also \$25 demurrage which accrued during a dispute concerning the applicable rate. A commodity rate of 24 cents, minimum 40,000 pounds, applied on scrap iron. The class-A rate of 79 cents applied on steel boilers, new or secondhand.

Complainant paid \$16 per ton, said to have been the prevailing price on scrap iron, for the boilers, f. o. b. Carson. It appears that they were in such condition that they could not again be used as boilers. Complainant cut out the heads and domes and removed the flues at St. Louis, and sold the shells, weighing about 19,000 pounds, at a price "between \$40 and \$45 per ton," said to be slightly higher than the current price of scrap steel, to a boiler maker who cut them up and used the pieces in repair work. The flues were mixed with other flues and complainant could not state what became of them, except that they were not again used as boiler flues. It is not shown that they were incapable of being reconditioned for use as secondhand pipe or fence posts.

While the tariff naming the commodity rate did not define scrap iron, rates on scrap iron are understood generally to apply on scraps or pieces of iron or steel having value for remelting purposes only, and the western classification, which governed the tariff naming the 24-cent rate on scrap iron, carried a note to that effect. Iron or steel articles which have a recognized commercial value other than that of the metal from which they are manufactured are not properly described as scrap iron. *Schwartz v. St. L.-S. F. Ry. Co., supra*. The class-A rate of 79 cents was applicable on this shipment which was undercharged \$51.39.

Complainant further contends that the applicable class-A rate of 79 cents was unreasonable as applied to secondhand boilers. The reasonableness of the classification rating on boilers is not attacked, nor is it contended that the class-A rate, as such, was unreasonable; but complainant asks for a commodity rate on secondhand boilers approximating one-half of the class rate. It is stated that in making commodity rates from Carson to St. Louis the corresponding rates from Texas common points are generally regarded as maxima, but that the rates from Texas common points are not all published from Carson.

Complainant refers to the 40-cent rate on wrought and cast iron pipe, secondhand, and the other commodity rates from Texas common points to St. Louis above mentioned in connection with Sub-No. 1, but does not show that the transportation characteristics of boilers and the other commodities are similar. It appears that the rate on

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secondhand pipe was made to take care of the movement of old pipe from the oil fields. Complainant also refers to commodity rates contemporaneously applicable from Texas common points to St. Louis, on numerous other articles, such as brick, glassware, nuts, canned goods, and iron or steel angle bars and columns, ranging from 20 cents, minimum 50,000 pounds, on the first, to 60 cents, minimum 36,000 pounds, on the last. It is claimed, not that these are analogous articles, but that in most cases their transportation is more hazardous and their value greater than that of scrap iron. The volume of movement of these articles is not shown.

It does not appear that there has been or probably will be any other movement of boilers from Carson to St. Louis. The record does not indicate what would be a reasonable basis for a commodity rate on secondhand boilers from and to these points, nor are we convinced that defendants should be required to establish such a rate.

We find that the rate applicable on the boiler flues and tubes contained in the shipments covered by Sub-No. 1 was unreasonable to the extent that it exceeded 40 cents per 100 pounds, minimum 46,000 pounds. Undercharges to the basis of that rate and minimum should be waived. That rate as increased under general order No. 28 of the Director General of Railroads and under *Increased Rates, 1920*, 58 I. C. C., 220, is now in force, and no order for the future is necessary. Freight charges on the scrap iron should be adjusted to the basis of the applicable rate and minimum.

We further find that the rate applicable and the demurrage charges collected on the shipment covered by Sub-No. 2 have not been shown to have been unreasonable or otherwise unlawful.

An order dismissing the complaints will be entered.

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No. 10771.¹

UNITED IRON WORKS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY, ET AL.

Submitted April 26, 1920. Decided March 1, 1921.

1. Rates on iron pipe fittings, in carloads, from Okmulgee, Okla., to points in Missouri, Illinois, Kansas, and Texas, found unreasonable and unduly prejudicial. Reparation awarded and reasonable maximum and non-prejudicial rates prescribed for the future.
2. Rates on wrought-iron pipe, in carloads, from points in Oklahoma to points in Texas found unreasonable. Reparation awarded and reasonable maximum rates prescribed for the future.
3. Fourth section relief denied.

S. C. Bates for United Iron Works Company; *Thomas D. Lyons* and *Hal F. Rambo* for Roxana Petroleum Company of Oklahoma; and *Aby & Tucker* and *Rice & Lyons* for complainants in Nos. 10497, 10452, and subnumbers.

Hale Houts, *Fred C. Dumbeck*, *F. E. Tyler*, *J. R. Turney*, *C. S. Burg*, and *E. T. Miller* for defendants in No. 10771; *A. P. Stewart* for defendants in No. 10659; and *T. J. Norton*, *S. W. Hayes*, and *F. E. Andrews* for defendants in Nos. 10497, 10452, and subnumbers.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

These cases are related and will be disposed of in one report.

¹ This report also embraces No. 10659, Same v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.; No. 10497, Roxana Petroleum Company of Oklahoma v. Director General, as Agent, Missouri, Kansas & Texas Railway Company, et al.; No. 10452 and No. 10452 (Sub-No. 1), Frick-Reid Supply Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.; No. 10452 (Sub-No. 2), McMana Oil & Gas Company v. Director General, as Agent, Missouri, Kansas & Texas Railway Company, et al.; No. 10452 (Sub-No. 3), Frick-Reid Supply Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.; No. 10452 (Sub-No. 4), Sinclair-Gulf Pipe Line Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.; No. 10452 (Sub-No. 5), Sinclair-Gulf Pipe Line Company v. Director General, as Agent, Sapulpa & Oil Fields Railroad, et al.; No. 10452 (Sub-Nos. 6 and 7), Sinclair-Gulf Oil Company v. Director General, as Agent, Chicago, Rock Island & Pacific Railway Company, et al.; No. 10452 (Sub-No. 8), Frick-Reid Supply Company v. Director General, as Agent, Missouri, Kansas & Texas Railway Company, et al.; and Portions of Fourth Section Applications Nos. 631 and 701.

NOS. 10659 AND 10771.

The complaint in No. 10771, seasonably filed by a corporation manufacturing iron and steel articles at Okmulgee, Okla., attacks the carload rates on iron pipe fittings from Okmulgee to points in Illinois, Missouri, Kansas, and Texas, as unreasonable, unjustly discriminatory, unduly prejudicial, and in some instances in violation of the long-and-short-haul provision of the fourth section of the act to regulate commerce. Reasonable and nonprejudicial rates for the future are sought. In No. 10659 reparation is sought on two shipments from Okmulgee, one to Carrollton, Mo., May 26, 1917, and the other to East Fort Madison, Ill., June 8, 1917. Rates will be stated in cents per 100 pounds and do not include the increases authorized under *Increased Rates, 1920*, 58 I. C. C., 220.

Complainant in these cases established its plant at Okmulgee in 1916 for the manufacture of iron pipe fittings used principally in the oil industry. It is interested chiefly in the rates to St. Louis and Kansas City, Mo., Dallas and Fort Worth, Tex., and Texas common points, where it competes with manufacturers and jobbers located at Cleveland, Ohio, Pittsburgh, Pa., Chicago, Ill., and at St. Louis and Kansas City. The rates to Texas points will be considered in connection with the other complaints consolidated herein.

Fifth-class rates, governed by the western classification, applied and apply on this traffic from Okmulgee to the several destinations, except those in Texas. Commodity rates substantially lower than fifth class apply in the opposite direction. Thus rates of 54 and 66.5 cents apply from Okmulgee to Kansas City and St. Louis, respectively, while the rates in the opposite direction are 40 and 46.5 cents. The minimum weights are 40,000 pounds eastbound and 46,000 pounds westbound. Complainant is willing to have the same commodity minimum if accorded the same commodity rates. It offered other comparisons to show that the rates from Okmulgee are unduly high, measured by the rates into the same territory from eastern competing points, and that on various articles, such as agricultural implements, lime, and cement, defendants maintain the same rates in both directions between Okmulgee and St. Louis, as well as on these and other commodities, such as junk, scrap brass and copper, and sewer pipe, between Okmulgee and Kansas City. Reference is also made to the rate of 50 cents maintained on iron pipe fittings from Fort Worth to St. Louis by way of Okmulgee, which is the same as the rate in the opposite direction and lower than the rate from Okmulgee to St. Louis. This adjustment is violative of the fourth section and, as it is unprotected, is unlawful and should be corrected.

In support of its contention that wherever a regular movement could be developed from Oklahoma points eastbound the carriers

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have ordinarily established commodity rates under which the traffic could move, complainant shows that commodity rates are in effect on castings, in carloads, from Okmulgee to Springfield, Mo.; on iron or steel tank material, in carloads, from Tulsa, Okla., to Kansas City, and on bolts, nuts, etc., from Sand Springs, Okla., to various points in Kansas and Missouri; and that a special rate of 46.5 cents was established on pipe fittings, in carloads, from Cushing, Okla., to Roxana, Ill., within St. Louis rate territory, to take care of a particular movement incident to the dismantling of a plant at Cushing.

Complainant's witness stated that since the establishment of the Okmulgee plant it has shipped from that point only 15 or 20 carloads of pipe fittings into Missouri, Kansas, and as far east as Illinois, owing to the rate disadvantage under which it labors, and that if the rates were properly adjusted the movement eastbound into those territories would be regular and would approximate six or seven carloads a month. Complainant also stresses its disadvantage in comparison with its competitors resulting from higher inbound rates on its raw materials. We have repeatedly held that we may not require carriers to equalize natural advantages, such as location and cost of production.

The shipments in No. 10659 weighed 44,237 and 38,900 pounds, respectively. Charges of \$221.19 were collected on the shipment to Carrollton and \$221.73 on the shipment to East Fort Madison. The rate applicable to both shipments was the fifth-class rate of 53 cents. The Carrollton shipment was undercharged \$13.27, and the East Fort Madison shipment overcharged \$15.56. A commodity rate of 38 cents on iron pipe fittings, in carloads, minimum 46,000 pounds, subsequently increased to 46.5 cents under general order No. 28 of the Director General of Railroads, was contemporaneously in effect from St. Louis territory, which includes Carrollton and East Fort Madison, to Okmulgee. Complainant understood that the westbound rate was applicable eastbound until after it had made the shipments. Thereafter it refrained from making shipments to eastern points from Okmulgee but shipped from other less distant plants.

Defendants contend that when these shipments moved the volume of traffic did not justify a commodity rate eastbound; that the applicable fifth-class rate was not unreasonable; and that the volume of movement from St. Louis territory to Okmulgee warranted the maintenance of a commodity rate lower than fifth-class. They are willing, however, to establish for the future the same rates from Okmulgee to Kansas City and St. Louis, and points taking the same rates, as apply in the opposite direction. This, complainant stated, would satisfy its complaint in No. 10771 so far as the eastbound rates are concerned.

We find that the rates applicable on the shipments to Carrollton and East Fort Madison were unreasonable and unduly prejudicial to the extent that they exceeded 38 cents per 100 pounds, minimum 46,000 pounds, and that the present rates from Okmulgee to St. Louis and Kansas City, and points taking the same rates, are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceed or may exceed 46.5 and 40 cents per 100 pounds, respectively, minimum 46,000 pounds, plus the increases authorized under *Increased Rates, 1920*.

We further find that complainant in No. 10659 made the shipments as described and paid and bore the charges thereon, that it has been damaged and is entitled to reparation, with interest, in an amount equal to the difference between the charges paid and those that would have accrued on basis of the rate herein found to have been reasonable.

NOS. 10497, 10452, AND SUB-NOS. 1 TO 8.

The complainants in these cases are corporations doing business in Oklahoma. One, the Frick-Reid Company, is a jobber of pipe with supply houses in the oil territory; another, the Sinclair-Gulf Pipe Line Company, is engaged in transporting crude petroleum by pipe line; and the others are producers of oil. They allege that unreasonable rates were charged by defendants on various carloads of wrought-iron pipe shipped between January 2, 1918, and February 13, 1919, from the six Oklahoma points to the six Texas points hereinafter named. In No. 10497, it is also alleged that the rates were and are unjustly discriminatory and unduly prejudicial. Reparation and reasonable rates for the future are asked.

The pipe used in the Oklahoma and Texas oil fields is manufactured in the east and complainants had accumulated a large supply in Oklahoma, including a considerable portion which had been removed from abandoned wells and cleaned. Certain of the complainants extended their operations to Texas because of the greater demand in that field for pipe, which could be received more quickly from Oklahoma than from the east. Prior to the date of these shipments there had been no movement from Oklahoma to Texas, but in May, 1918, complainants, anticipating a substantial movement, requested the establishment of commodity rates.

On all but one shipment the rates applicable were the fifth-class short-line distance rates on the basis prescribed in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 23 I. C. C., 688; 26 I. C. C., 520, as later modified in the *Southwestern Class Case*, 48 I. C. C., 379, and increased by 25 per cent on June 25, 1918, under general order 61 I. C. C.

No. 28 of the Director General of Railroads. The rate applicable on the excepted shipment, which moved prior to June 25, 1918, was on the same basis without the increase which became effective on that day. The following table shows the names of complainant shippers, number of shipments made by each, points of origin in Oklahoma and of destination in Texas, short-line distances, rates charged, and rates applicable. The minimum weight prescribed in connection with these class rates is 36,000 pounds. The average weight was 66,950 pounds. Certain of the shipments were overcharged.

Shippers.	Number of shipments.	Origins in Oklahoma.	Destinations in Texas.	Distances.	Rates charged.	Rates applicable.
				<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Roxana Petroleum Company of Oklahoma.	1	Cushing.....	Graford.....	320.2	53	1 51
Frick-Reid Supply Company.	1	Quay.....	Burkburnett..	253	70	59
Do.....	1	do.....	do.....	253	78.5	59
Do.....	1	do.....	Wichita Falls.	239	60	59.5
Do.....	1	Cleveland.....	do.....	258	59	59
McMann Oil & Gas Company.	1	do.....	Mag.....	271	61.5	59
Sinclair-Gulf Pipe Line Company.	6	Tribby.....	Ranger.....	274	59	59
Do.....	1	Shamrock *.....	do.....	431.3	67.5	67.5
Sinclair-Gulf Oil Company.	1	Hennessey.....	do.....	345.8	63	63
Do.....	1	do.....	Olden.....	352.2	65	65

¹ Shipment made prior to June 25, 1918. Other shipments subsequent to that date.

* Located on a branch line of the St. Louis-San Francisco Railroad connection with the main line at Dewey, Okla. The rate is made by the addition of an arbitrary to the junction point rate.

Prior to February 14, 1912, the fifth-class distance rates applied generally on this traffic from Oklahoma to Texas points unless lower group rates were available. On that date a commodity rate of 35 cents, then applicable from Kansas City territory to Dallas-Fort Worth group points, was established from Tulsa and Muskogee, Okla., to those destinations. It was subsequently made effective to the same destinations from certain other Oklahoma points not including those here before us. On June 25, 1918, this rate was increased to 44 cents. On March 28, 1919, the 44-cent rate was made applicable, in both directions, between points in Oklahoma groups A to I, inclusive, and in Texas groups 1 to 5, inclusive, which respectively include the origin and destination points of complainants' shipments. These Texas groups collectively embrace substantially the same points as the Dallas-Fort Worth group on traffic from Kansas City.

This group rate, minimum 46,000 pounds, now applies from a territory which comprises, generally speaking, all points in Kansas east of a line drawn from Salina to Anthony, including Kansas City, Mo., and near-by points on the Missouri River, and all points in Oklahoma except those in the southern portion where the fifth-class

distance rates are lower, and those on certain short lines and branch lines from which arbitraries are added to the group rates. Shamrock takes a rate 7.5 cents over the group rate, but no serious objection is made here as to the propriety or amount of that arbitrary. While no reason appears for blanketing the 44-cent rate over so large a territory, complainants attack the rates from and to specific points and the group adjustment as a whole is not in issue.

Cushing and certain other Oklahoma points are intermediate by some routes between points in the Kansas City territory and Graford, and portions of defendants' Fourth Section Application No. 631 protecting the adjustment were assigned for hearing with the complaints. These departures were removed by the establishment of the Kansas City basis of rates from such intermediate points, and no testimony in support of the application was offered. It will therefore be denied to the extent that it is involved.

The record is devoted in the main to the level of the rates assailed, and the allegations of unjust discrimination and undue prejudice are not sustained. Some of the complaints were filed prior to the publication of the present rates and others subsequent thereto, but in each a rate of 44 cents for the future and reparation upon that basis was sought. By amendments filed at the hearing complainants ask for a rate of 30 cents for the future from all points in Oklahoma to the Dallas-Fort Worth group, based upon the commodity rate of 24 cents (increased by 25 per cent) to or from points in Texas common-point territory for hauls in excess of 90 miles, prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, 358, known as the *Shreveport Case*, and contend that, as the class rates from Oklahoma to Texas are based on the "Shreveport" scale of class rates, the commodity rates on iron pipe should be no higher than the "Shreveport" commodity rates on iron pipe. Reparation is still asked to the basis of the 44-cent rate.

Complainants also state that from Pittsburgh, Pa., to representative points in Oklahoma and Texas the rates are 70 cents and 74 cents, respectively, and contend that, as the defendant carriers participate in the haul to Oklahoma, their rates from Oklahoma to Texas should be on a low basis to permit movement in competition with shipments from eastern mills to Texas. This contention is without merit.

Complainants direct attention to the percentage relation of commodity rates to class rates, which is materially higher from Oklahoma to Texas than from Kansas City, St. Louis, and Shreveport, La., to Texas. They introduced exhibits to show that the average rate on this traffic from Oklahoma to the Dallas-Fort Worth group

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is relatively higher than the average rate from Kansas City or St. Louis to the same destination and higher than the average rate which would result from application of the commodity scale prescribed on pipe in the *Shreveport Case*, increased by 25 per cent. They show that from Healdton, Ardmore, Cushing, Tulsa, and Muskogee, Okla., to Graford, Fort Worth, Ranger, and Wichita Falls the average distance is 247.06 miles, the average rate 43.15 cents, and the average ton-mile yield 38.76 mills; that the rate basis prescribed in the *Shreveport Case*, *supra*, increased by 25 per cent, would result in a rate of 30 cents from and to each of these points, yielding average ton-mile earnings of 27.49 mills; that from Kansas City to 15 points in Oklahoma the average rate is 34.7 cents, the average distance 307.9 miles, and the average ton-mile earnings 23.81 mills; that from St. Louis to the same 15 points in Oklahoma the average distance is 499.2 miles, the average rate 42 cents, and the average earnings 17.28 mills per ton-mile.

Complainants further compare the rates assailed with rates on this traffic from Kansas City to points in Oklahoma on the Midland Valley ranging from 32.5 to 36.5 cents for distances from 235 to 258 miles; and from Kansas City to points in Oklahoma on the Missouri, Oklahoma & Gulf, ranging from 36.5 to 40 cents for distances from 258 to 424 miles.

For defendants it was testified that the rates from Kansas City and eastern defined territories to Texas are made with relation to those from St. Louis; that except for the increase under general order No. 28 these St. Louis-Texas rates have been in effect for several years; that they are depressed below a normal basis because of the competition which formerly existed between the all-rail and rail-water-and-rail rates from Atlantic seaboard territory to Texas coupled with the low Texas intrastate rates; that in the past the larger portion of the tonnage of iron and steel articles from Atlantic seaboard territory to Texas moved by rail to Atlantic ports, by water to Galveston and Houston, and by rail to interior points; that reductions were made in the all-rail rates from the east to Texas to meet this competition and similar reductions were made from St. Louis; and that the rates to northern Texas were made on the basis of the rail-water-and-rail rates to Galveston and Houston and the intrastate rate thence to northern Texas. Defendants point out that the rates on pipe from Pittsburgh to Fort Worth and Houston are 75 cents and 59.5 cents, respectively, and from St. Louis 50 cents to Fort Worth and 34.5 cents to Houston, the spread between Fort Worth and Houston in each instance being 15.5 cents, which, it is said, is substantially the amount of the rate fixed by the state commission on intrastate traffic from Houston to Fort Worth.

The commodity rate of 24 cents, since increased to 30 cents under general order No. 28, was fixed in the *Shreveport Case, supra*, as a maximum rate for single-line hauls ranging from 90 to more than 400 miles between Shreveport and Texas interstate common points. For joint-line application the maximum prescribed was 28 cents, which with 25 per cent added would be 35 cents. Defendants say that these rates are reached, under the scale applicable, at 90 miles on single-line hauls and at 75 miles on two-line hauls from Shreveport. They contend that the percentage relationship is without significance, because the class rates increase with distance and the commodity rate on pipe beyond 90 miles remains the same. They also contend that the rates from St. Louis and Kansas City to Oklahoma, which are relatively higher than to Texas, afford a fairer basis for comparison than the rates from St. Louis, Kansas City, or Shreveport to Texas. The average distance from and to the points of origin and destination here considered is about 300 miles. The rates from Kansas City to points in Oklahoma for this distance are approximately 40 cents. Complainants do not ask that rates from and to the points in question be replaced by rates varying with distance.

Complainant in 10771 shows that the rate on iron pipe fittings, which take the same rates as wrought-iron pipe in this territory, from Okmulgee to Denison, Tex., and certain other points near the Okmulgee-Texas border is 42.5 cents, or 7.5 cents under St. Louis; to points in the Dallas-Fort Worth group 44 cents, or 6 cents under St. Louis; to Texas common points, 50 cents, the same as from St. Louis; and to Houston and Galveston, Tex., 50 cents, or 15.5 cents over St. Louis. In some instances the rates from Kansas City are the same as from St. Louis, in others less. From points in the Little Rock-Fort Smith group in Arkansas to Texas points the rates on this traffic are 12.5 cents under St. Louis. Little Rock and Fort Smith are 348 and 416 miles, respectively, southwest of St. Louis. This complainant urges that as Okmulgee is 470 miles southwest of St. Louis it should be given rates to Texas points 12.5 cents under St. Louis, the same as Little Rock and Fort Smith. It does not appear that complainant meets with any competition from Little Rock or Fort Smith.

Comparison is made with what are said to be the average rates, distances, and ton-mile earnings on this traffic to 12 Texas points:

To Texas points from—	Average distances.	Average rates.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
Pittsburgh, Pa.....	1,333	71	10.7
Chicago, Ill.....	1,124	53.5	9.5
St. Louis, Mo.....	1,008	47.5	9.4
Kansas City, Mo.....	708	46.5	12.9
Okmulgee, Okla.....	410	49.5	24.2

At the hearing defendants in No. 10771 submitted no evidence in support of the present adjustment; on the contrary they suggested the following rates from Okmulgee, which counsel for complainant indicated would be satisfactory: To points in Dallas-Fort Worth and Texas common-point territories, except Galveston and Houston, 9 cents under the St. Louis rates to the same points; and to Galveston and Houston the same rate that applies from St. Louis and Kansas City to those points.

Attention is called to the fact that as the rates to Houston and Galveston from Kansas City, St. Louis, and Peoria and Chicago, Ill., which apply through Okmulgee by way of the St. Louis-San Francisco are lower than those applicable from Okmulgee to the same destinations the adjustment contravenes the long-and-short-haul provision of the fourth section. There was assigned for hearing in connection with No. 10771 such portions of fourth section application No. 701 of F. A. Leland, agent, for and on behalf of interested carriers, which sought authority to continue to charge for the transportation of iron pipe fittings from Kansas City, St. Louis, Peoria, and Chicago, to Houston, Galveston, and other points in Texas, rates which are lower than the rates contemporaneously maintained on like traffic from and to Okmulgee and other intermediate points. The testimony adduced in justification of the fourth section departures is that iron pipe fittings are not manufactured at St. Louis; that the rates from that point to Houston and Galveston are as a matter of fact merely basing rates upon which the rates from eastern manufacturing points to Galveston and Houston are predicated; that pipe fittings move from the east by rail to Atlantic ports and thence by water to Houston and Galveston; and that the rates from St. Louis are made low to equalize the all-rail and the rail-and-water rates from the east to Houston and Galveston and are affected by the combination on New Orleans. The volume of movement via the Atlantic ports is not shown. The fourth-section relief asked will be denied.

The class rates from St. Louis to New Orleans have been revised to conform to the fourth section. Commodity rates revised in accordance with our report and orders in *Memphis-Southwestern Investigation*, 55 I. C. C., 515, have also been filed and are under suspension in Investigation and Suspension Docket No. 1808, *Rates to, from, and between Points South of the Ohio River Including the Mississippi Valley*. The class rates from St. Louis to Galveston are already in conformity with these provisions.

We find that the rates applicable on the shipments in Nos. 10497, 10452, and Sub-Nos. 1 to 8, inclusive, except from Shamrock to Ranger and from Cushing to Graford, were unreasonable to the
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extent that they exceeded 40 cents per 100 pounds; that the rate from Shamrock to Ranger was unreasonable to the extent that it exceeded 47.5 cents per 100 pounds; that the rate applicable from Cushing to Graford prior to June 25, 1918, was unreasonable to the extent that it exceeded 32 cents per 100 pounds; and that the present rates from and to the same points are, and for the future will be, unreasonable to the extent that they exceed or may exceed 40 cents per 100 pounds, except from Shamrock to Ranger, which rate is, and for the future will be, unreasonable to the extent that it exceeds or may exceed 47.5 cents per 100 pounds. The rates found reasonable for the future are subject to a minimum of 46,000 pounds and to the increases authorized in *Increased Rates, 1920, supra*.

We further find that the rates in issue in No. 10771 on iron pipe fittings, in carloads, from Okmulgee to points in Texas in the Dallas-Fort Worth group, are, and for the future will be, unreasonable to the extent that they exceed or may exceed 40 cents per 100 pounds, subject to a minimum weight of 46,000 pounds and to the increases authorized in *Increased Rates, 1920, supra*. The record affords no basis for a finding as to the reasonableness of the rates to the Texas common points or to Houston and Galveston. We further find that the rates from Okmulgee to points in the Dallas-Fort Worth group, to Texas common points, and to Houston and Galveston are, and for the future will be, unduly prejudicial to the extent that they exceed or may exceed rates not less than 9 cents per 100 pounds lower than the rates contemporaneously in effect on like traffic from St. Louis to the same destinations.

We further find that the Roxana Petroleum Company, Frick-Reid Supply Company, McMann Oil & Gas Company, Sinclair-Gulf Pipe Line Company, and Sinclair-Gulf Oil Company made shipments of wrought-iron pipe as above described; that they paid and bore the charges thereon; that they have been damaged to the extent that the rates from and to the points in question, except from Shamrock to Ranger, exceeded 44 cents per 100 pounds, and that on the shipment from Shamrock to Ranger the Sinclair-Gulf Pipe Line Company has been damaged to the extent that the charges paid exceeded those which would have accrued at a rate of 51.5 cents per 100 pounds; and that these complainants are entitled to reparation accordingly, with interest. Complainants should comply with rule V of the Rules of Practice.

Appropriate orders will be entered.

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No. 10176.¹

QUINTON SPELTER COMPANY

v.

FORT SMITH & WESTERN RAILROAD COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted September 23, 1920. Decided March 8, 1921.

Rates on fire brick, fire clay, and dobies, in carloads, from St. Louis and Mexico, Mo., to Quinton, Okla., found on rehearing to have been unreasonable to the extent that they exceeded the aggregates of intermediate rates. Reparation awarded. Prior finding that complainant is not shown to have been damaged by the alleged undue prejudice affirmed on rehearing. Original report 53 I. C. C., 529.

R. McCray, Charles H. Apt, and John F. Goshorn for complainant.

G. L. Oliver for Fort Smith & Western Railroad Company.

R. D. Williams for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

The issues here presented were made the subject of a proposed report, to which exceptions were filed by complainant.

In our original report, 53 I. C. C., 529, we found that rates of 25 cents per 100 pounds charged on certain carloads of fire brick, fire clay, and dobies, the last named being large bricks composed of calcined fire clay, shipped from St. Louis and Mexico, Mo., to Quinton, Okla., in May, 1916, were not shown to have been unreasonable, and that the evidence of damage was not sufficient to support an award of reparation under a finding of undue prejudice. The complaints, seeking reparation only, were dismissed. On April 5, 1920, on motion of the complainant, the proceeding was reopened for further hearing.

Complainant erected a smelter at Quinton in 1916. Effective June 2, 1916, the assailed rates of 25 cents were reduced to 15 cents. We are asked to award reparation on this basis. Rates will be stated herein in cents per 100 pounds.

Of the 34 cars shipped, 25 were used in the construction of the plant. Almost immediately upon the completion of the plant the 15-cent rate became effective.

¹This report also embraces No. 10176 (Sub-No. 1), Same v. Fort Smith & Western Railroad Company, Director General, et al., and No. 10176 (Sub-No. 2), Same v. Fort Smith & Western Railroad Company, Director General, et al.

For the distance over which all but one of the shipments moved, 572 miles, the 25-cent and 15-cent rates yielded respectively 8.74 and 5.24 mills per ton-mile, which were compared with ton-mile earnings ranging from 9 to 10.2 mills under rates of from 13 to 20 cents, for distances of from 254 to 445 miles from St. Louis to points in Mississippi and Tennessee where rates are said to be held down by water competition.

Complainant now shows that the average carload weight of the 34 cars was 61,612 pounds and that the average freight charges of \$154.03 exceeded the invoice value of representative cars of fire clay and fire brick.

The short-line distance from St. Louis to Quinton, via the St. Louis-San Francisco Railway, Fort Smith, Ark., and the Fort Smith & Western Railroad, is 479 miles. The rates assailed for that distance yielded 10.5 mills per ton-mile and 32 cents per car-mile. These earnings are compared with those derived from rates on fire brick from St. Louis to 15 points in Oklahoma, at 9 of which smelters or glass plants using fire brick and fire clay are located, average distance, 497 miles; average rate, 12.2 cents; average earnings per ton-mile, 4.9 mills, and average earnings per car-mile, 15 cents. These data tend to support defendants' contention that the compared rates are unduly low.

The commodities shipped are rated class E in western classification; the rate for that class at the time they moved was 28 cents; and the rate attacked was 89 per cent of that class rate. The average commodity rate to the other Oklahoma points averaged 52 per cent of their average class rates. However, it can not be said that a commodity rate must bear a fixed relation to the corresponding class rate, even as between competing points. The per car earnings on fire brick, rate 25 cents, minimum 50,000 pounds, were \$125; and at the 15-cent rate, \$75. These are compared with the per car earnings for the transportation of numerous commodities, all rated higher than fire brick, etc., ranging from \$66 on scrap iron, minimum 30,000 pounds, to \$133.90 on packing-house products, minimum 26,000 pounds. The bare rates are stated without exposition of the surrounding circumstances and conditions.

From April 12 to May 26, 1916, the lowest combination rate on fire brick and fire clay from St. Louis to Quinton was 23 cents composed of 12 cents from St. Louis to Checotah, Okla., 4.5 cents Checotah to Crowder, Okla., and 6.5 cents Crowder to Quinton. Effective May 27, 1916, the lowest combination became 22.5 cents composed of 12 cents, St. Louis to Eufaula, Okla.; 4 cents thence to Crowder and 6.5 cents beyond. At the same time the rate from the St. Louis territory to Fort Smith, via the Missouri, Kansas & Texas,

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Crowder, and the Fort Smith & Western, was 22 cents. Quinton is intermediate via this route. From the same territory to Oklahoma City, Okla., the rate on fire brick was 18.5 cents, and Quinton is intermediate via the Missouri Pacific Railroad, Fort Smith, and the Fort Smith & Western. Via this route the distance to Oklahoma City is 734 miles; to Quinton, 568 miles. Defendants had been granted authority in a general order to depart from the long-and-short-haul rule in these instances.

In *Evens & Howard Fire Brick Co. v. St. L., I. M. & S. Ry. Co.*, 25 I. C. C., 141, decided November 11, 1912, we held that a rate of 27 cents on fire brick from St. Louis to Texas common points was not shown to be unreasonable.

Reference is made by complainant to the fact that the Missouri, Kansas & Texas and the Missouri Pacific railroads have been permitted upon our special docket to make refunds in the difference between the 25-cent rate and the rates subsequently established to Checotah and to South Fort Smith, Ark., but admissions of the defendants in those applications are not binding on them as to the rates from St. Louis to Quinton, located on the Fort Smith & Western.

Three of the shipments moved during the period when and over the route via which the aggregates of the intermediate rates were 2.5 cents lower than the joint rates charged and 31 of the shipments moved when the aggregates of the intermediates were 2 cents lower. Defendants have not rebutted the prima facie presumption that the joint rates were to that extent unreasonable.

Upon this record we find that the rates of 25 cents per 100 pounds, which exceeded the lowest aggregate of intermediate rates subject to the act contemporaneously in effect from and to the same points over the same routes, were unreasonable to the extent of that excess. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby to the amount of the difference between the charges paid and those that would have accrued on the bases herein found reasonable; and that it is entitled to reparation in the sum of \$382.83 from the Missouri, Kansas & Texas Railway Company and Fort Smith & Western Railroad Company and their receivers; \$15.30 from the St. Louis, Iron Mountain & Southern Railway Company and Fort Smith & Western Railroad Company and their receivers, and Missouri Pacific Railroad Company; \$30.04 from the Wabash Railway Company, the Missouri, Kansas & Texas Railway Company and Fort Smith & Western Railroad Company and their receivers; with interest.

Our original finding that the evidence of damage is insufficient to support an award of reparation under a finding of undue prejudice is affirmed.

An appropriate order will be entered.

611 C. C.

No. 11121.

BIRDSBORO STONE COMPANY

v.

**PENNSYLVANIA RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.**

Submitted October 25, 1920. Decided March 5, 1921.

Rates charged on shipments of crushed rock in carloads from Monocacy, Pa., to destinations in the states of Pennsylvania, Maryland, Delaware, and New Jersey found to have been unreasonable. Reparation awarded.

M. Walton Hendry and Ralph J. Baker for complainant.

Henry Wolf Bikelé for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

Exceptions were filed to the report proposed by the examiner and the case was orally argued before us.

Complainant is a corporation engaged in quarrying, crushing, and selling stone, with its quarry and plant on the line of the Pennsylvania between Monocacy and Birdsboro, Pa., somewhat nearer the former. By complaint seasonably filed it alleges that the rates charged on numerous carload shipments of crushed rock from Monocacy to points in the states of Pennsylvania, Maryland, Delaware, and New Jersey during the period from July 16, 1918, to December 31, 1918, were unjust and unreasonable to the extent that they exceeded the rates contemporaneously applicable from Birdsboro. The prayer is for reparation.

The shipments moved over the defendant carriers' lines, and in each instance the rates charged exceeded those contemporaneously applicable from Birdsboro. In *State of Maryland v. B., C. & A. Ry. Co.*, 49 I. C. C., 681, hereinafter called the *Birdsboro Case*, we prescribed certain distance rates as reasonable maximum rates for the interstate transportation of crushed stone in carloads from Birdsboro and Devault, Pa., and Port Deposit, Md., to points on the eastern shore of Maryland, and from Birdsboro to points on the defendant carriers' lines in the states of New York, New Jersey, Delaware, Maryland, Virginia, and the District of Columbia. These rates were on 10-mile blocks and were for distances from 51 to 220 miles, inclusive.

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Complainant's shipments are, and for many years have been, made from Monocacy, a nonagency station. Billing was and is made out by the agent at Birdsboro, which is about 2 miles from Monocacy. Prior to July 15, 1918, the effective date of the order in the *Birdsboro Case*, the bills of lading showed Birdsboro as the point of origin. After that time "Birdsboro-Monocacy" was used at defendants' request. Until July 15, 1918, Monocacy took the same rate as Birdsboro and complainant had considered the latter its shipping point. Evidence in the *Birdsboro Case* was predicated upon this assumption, as no shipments of crushed rock originate at Birdsboro. During federal control no changes could be made in rates by the various railroad officials without securing a freight-rate authority from the Railroad Administration. Accordingly, the maximum rates prescribed by us in the *Birdsboro Case*, plus 1 cent per 100 pounds as provided by general order No. 28 of the Director General of Railroads, were made effective July 15, 1918, from Birdsboro but not from Monocacy, the latter not being specifically covered by the order in that case. The matter was taken up by complainant with the defendants and, effective February 26, 1919, rates were published from Monocacy on the basis of the distance scale, plus 15 per cent and the increase of 1 cent per 100 pounds authorized by general order No. 28.

The examiner's proposed report in the *Birdsboro Case* was served in September, 1917. Between that time and the date of our report, April 20, 1918, we approved the 15 per cent increase in commodity rates in this territory, but this increase was not reflected in the distance rates prescribed in our report for application from Birdsboro, Devault, and Port Deposit, the scale recommended by the examiner being adopted. Rates on crushed stone from other producing points included the 15 per cent increase and effective March 1, 1919, the rates from the three points named were increased so as to include an increase of 15 per cent over the distance rates prescribed in our order.

In proceedings filed October 31, 1917, with the Public Service Commission of Pennsylvania complainant attacked the rates from Monocacy to destinations within that state, and that commission, by order dated April 15, 1919, found reasonable for application to intrastate hauls the scale prescribed in the *Birdsboro Case* for the distances covered therein, and scaled it back to cover rates for shorter distances. The order of the Pennsylvania commission furthermore authorized defendants to adjust the new scale of state rates to any changes lawfully made since the filing of the complaint. Such changes included in addition to the increase of 15 per cent authorized in commodity rates under our order of March

12, 1918; the further increase of 1 cent per 100 pounds authorized under general order No. 28 of the Director General. As the rate-making power of the state commissions was superseded by that of the Director General during the period of federal control the order of the Pennsylvania commission was revoked and did not become effective. Meanwhile the rates from Monocacy under attack in the state proceedings had been subjected to these two increases. In consequence thereof the rates paid by complainant on the intrastate shipments here in issue were the original rates complained of before the Pennsylvania commission, plus the increases of 15 per cent and 1 cent per 100 pounds effective June 25, 1918. The Railroad Administration subsequently adjusted the intrastate rates from Birdsboro and Monocacy upon the basis of the distance scale authorized in the *Birdsboro Case*, plus the increases herein referred to, but this adjustment was not made effective until May 1, 1919.

The following table illustrates the various changes in the rates, which are stated in amounts per ton of 2,000 pounds:

To—	From Monocacy, Pa.			From Birdsboro, Pa.			
	Apr. 17, 1918.	June 25, 1918.	Feb. 26, 1919.	Apr. 17, 1918.	June 25, 1918.	July 15, 1918.	Mar. 1, 1919.
Bacon, Del.....	\$1.40	\$1.60	\$1.80	\$1.40	\$1.60	\$1.30	\$1.60
Linkwood, Md.....	1.40	1.60	1.50	1.40	1.60	1.30	1.50
Woodside, Del.....	1.20	1.40	1.20	1.20	1.40	1.20	1.30
Sylmar, Md.....	.90	1.10	1.00	.90	1.10	.90	1.10

After the rates from Birdsboro to interstate destinations were reduced, pursuant to our order in the *Birdsboro Case*, they were lower than from Monocacy, which was an intermediate point over the route of movement. As these departures from the fourth section have been removed and no shipments moved from Birdsboro during the period covered by the complaint, this feature of the case need not be further considered.

Defendants introduced no evidence in support of the reasonableness of the rates assailed. Their defense is, in substance, that on account of the pressure of work and the many preliminary steps necessary during federal control before any action could be taken it was impossible to readjust the rates from Monocacy at an earlier date.

We find that the rates charged were unjust and unreasonable to the extent that those charged on the interstate shipments exceeded the rates established on February 26, 1919, and those on the intrastate shipments exceeded the rates established on May 1, 1919; that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unjust and unreasonable;

and that it has been damaged in the amount of the difference between the charges collected and those which would have accrued at the rates herein found reasonable. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice, whereupon we will consider the entry of an order as to reparation.

No. 11583.

HEWITT-LEA-FUNCK COMPANY

v.

DIRECTOR GENERAL, AS AGENT, OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, ET AL.

Submitted December 3, 1920. Decided March 3, 1921.

Demurrage charges applicable for detention of a carload of lumber, etc., at Eagle, Colo., found not unreasonable or otherwise unlawful. Complaint dismissed.

E. D. Hodge for complainant.

John F. Finerty, H. A. Scandrett, A. C. Spencer, and W. A. Robbins for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the lumber business at Sumner, Wash., alleges by complaint filed June 16, 1920, that the demurrage charges collected on a carload of lumber, shingles, etc., shipped on September 21, 1918, from Sumner to Eagle, Colo., were unreasonable. Reparation is sought.

The shipment, consigned to complainant, order notify Frank Fox, arrived at Eagle October 9, 1918. The agent of the delivering carrier, the Denver & Rio Grande, notified Fox by telephone and in person on October 10 of the arrival of the shipment, and was in daily communication with him concerning its delivery, until November 11, 1918, when the Denver & Rio Grande notified complainant by letter, which complainant received November 14, 1918, that the shipment was undelivered and requested disposition.

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The shipment was sold f. o. b. Eagle to the First National Bank of Eagle County and delivered November 23, 1918. Demurrage charges of \$210 were collected. There appears to be an uncollected demurrage charge of \$110.

Complainant alleges that the demurrage charges were unlawful in that they exceeded \$18, computed from November 14, the date on which complainant received request for disposition order, to the date of delivery. The measure of the demurrage charges is not attacked, complainant's contention being that they were unlawfully assessed because defendants did not give the consignee written notice of arrival and failed to notify complainant within a reasonable time after arrival that the consignee had not accepted the shipment.

The governing tariff provided: "Notice shall be sent or given consignee by carrier's agent in writing, or as otherwise agreed to by carrier and consignee, within 24 hours after arrival of cars and billing at destination." The consignee was notified in person within 24 hours after arrival of the shipment. The tariff did not provide "when carload freight is refused at destination, notice of such refusal shall within 24 hours thereafter be sent by wire to consignor," as does the tariff now in effect. Defendants contend that if it had so provided complainant would not be entitled to reparation because the consignee did not refuse the shipment, but on the contrary stated from day to day that he expected to be able to accept it. Defendants assert that as soon as it became apparent that the consignee was not going to accept the shipment complainant was notified.

We find that the demurrage charges applicable were not unreasonable or otherwise unlawful. The complaint will be dismissed.

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No. 11302.

STONE PRODUCTS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted November 29, 1920. Decided March 3, 1921.

Rate on ground limestone, in carloads, from Bedford, Ind., to Streator, Ill., found not unreasonable or unduly prejudicial. Complaint dismissed.

R. B. Coapstick for complainant.

Silas H. Strawn, C. C. Hine, Frank H. Towner, and A. C. Hultgren for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing ground and agricultural limestone at Bedford, Ellettsville, and Oolitic, Ind., alleges that the rate of 9 cents per 100 pounds applicable on ground limestone, in carloads, from Bedford to Streator, Ill., is unreasonable and unduly prejudicial in comparison with the rate of \$1.20 per net ton on the same commodity from Alton, Ill., to Streator. We are asked to prescribe just and reasonable rates for the future. Rates will be stated in amounts per net ton and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

This ground limestone is used in the manufacture of glass and glass articles and is practically identical with the limestone used for agricultural purposes. Its value at complainant's plants at the time of hearing was said to be about \$2 per ton. It moves in ordinary box cars, and usually loads above the marked capacity of the cars. Claims for loss and damage are negligible.

Bedford is approximately the center of the Bedford stone district, which extends for about 75 miles north and south. Points within this district are blanketed as points of origin on stone traffic. Streator is about 90 miles southwest of Chicago. The short-line routes from Bedford to Streator are over the Chicago, Indianapolis & Northern Indiana R. Co., 61 I. C. C.

& Louisville, hereinafter called the Monon, to Shelby, Ind., or over the Chicago, Terre Haute & Southeastern, hereinafter called the Terre Haute, to Delmar, Ill., and the New York Central beyond, approximately 272 and 275 miles, respectively. The Chicago & Alton has two intrastate routes from Alton to Streator, the distances being 195 and 206 miles. Another route between these points is over the Chicago, Peoria & St. Louis to Pekin, Ill., and the Atchison, Topeka & Santa Fe beyond, 229 miles.

Prior to October 26, 1914, the rate on ground limestone, in carloads, from Bedford to Streator was \$1.30. On that date it was increased to \$1.40 following our order in *The Five Per Cent Case*, 31 I. C. C., 351; to \$1.60 on April 20, 1918, following our orders of March 12, 1918, in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and to \$1.80 on June 25, 1918, under general order No. 28 of the Director General of Railroads. The intrastate rate from Alton to Streator was 97.5 cents prior to June 25, 1918, when it was increased to \$1.20 under general order No. 28. Prior to the increase under *The Fifteen Per Cent Case*, *supra*, complainant had sold its limestone in large quantities to the glass and bottle factories at Streator in competition with Alton manufacturers, but states that following that increase, to which the Alton-Streator rate was not subjected, it lost its contracts and has been unable to renew them. Complainant is chiefly concerned with the relationship of the Bedford rate to the rate from Alton, and contends that the existing spread of 60 cents should be decreased to 20 or 30 cents, preferably by increasing the Alton rate and decreasing the Bedford rate.

Complainant introduced various distance scales showing rates applicable on intrastate shipments of agricultural limestone within the states of Indiana and Illinois over various lines, both joint and single line hauls. Under the Indiana scales the rates applicable for the Bedford-Streator distances are from \$1.50 to \$1.80 and for the Alton-Streator distance of 195 miles from \$1.30 to \$1.50. Under the Illinois scales the rate applicable for 195 miles is \$1.20 and for 272 miles, \$1.70. The Illinois scales were introduced for the purpose of showing the relatively higher basis of rates in Indiana.

The ton-mile earnings under the \$1.80 rate from Bedford and \$1.20 rate from Alton are 6.6 and 6.15 mills, respectively, for the short-line distances. The car-mile earnings based on the average weight of the shipments, 82,500 pounds, as shown in an exhibit introduced by complainant, are 27.3 and 25.4 cents, respectively.

The principal rate witness for the Terre Haute testified that commodity rates on ground limestone from Bedford to destinations in Indiana, Illinois, and other states were originally established on the basis of approximately 60 per cent of the sixth-class rates. Follow-

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ing *The Five Per Cent Case* and *The Fifteen Per Cent Case*, *supra*, and the general increase of June 25, 1918, that percentage relationship to the sixth-class rate was disturbed and the rates from Bedford are now less than 60 per cent of the present sixth-class rate.

Defendants introduced exhibits showing rates and earnings on shipments which moved from Bedford to various points during the period from September 1, 1919, to March 25, 1920, of which the following are illustrative:

Bedford to—	Routes.	Number of car-loads.	Dis- tances.	Rates.	Ton- mile earnings.	Car- mile earnings.
			<i>Miles.</i>		<i>Miles.</i>	<i>Cents.</i>
Muncie, Ind.	Terre Haute and C. C. C. & St. L.	35	152	\$1.40	5.2	33.5
Reading, Ohio	Terre Haute and P. C. C. & St. L.	6	196	1.40	7.1	23.6
Springfield, Ill.	Terre Haute and C. I. & W.	3	235	1.60	6.8	22
Alton, Ill.	Terre Haute and C. C. C. & St. L.	7	257	1.60	6.2	22.5
Streator, Ill.	Terre Haute and N. Y. C.	13	275	1.80	6.1	25
Mount Vernon, Ohio	Terre Haute and P. C. C. & St. L.	5	207	1.90	6.4	26.5
Maumee, Ohio	Monon and T. St. L. & W.	2	399	2.10	6.4	33.5

Defendants' evidence indicates that the rate from Bedford to Streator is properly aligned with rates from Bedford to other points, and supports their contention that to reduce the Bedford-Streator rate would disturb the relationship which that rate bears to the other rates from Bedford.

The Alton-Streator rate is said by defendants to be the outgrowth of an order issued by the Illinois Railroad and Warehouse Commission several years ago. The \$1.20 rate applies to Streator not only from Alton but from other Illinois points and from points in Missouri, over one-line hauls ranging from 175 to 281 miles, and it is contended that if the Alton-Streator rate alone is increased, the traffic would move from other points. The rate of \$1.20 is also applicable between other Illinois points for a distance of approximately 200 miles. Defendants point out that the operating conditions from Bedford are somewhat more difficult than from Alton, and for this reason and because the haul from Alton is over a single line they insist that the Bedford-Streator rate is reasonable in comparison with the Alton-Streator rate.

The undue prejudice here alleged is predicated on a disparity of rates to a common destination from two competing originating points served by different railroads. The Alton-Streator rate was not increased following *The Fifteen Per Cent Case*, and is on a slightly lower basis, distance considered, than the rate from Bedford. The carriers participating in the line-haul movement from Alton to Streator, however, do not participate in the line-haul move-

ment from Bedford to the same destination over the rate-making routes. In *Iron Ore Rate Cases*, 41 I. C. C., 181, 190, we said: "It is a well-established principle that undue prejudice or preference may not be said to exist as between shippers or communities unless the same carrier serves them or participates in their traffic, and the transportation conditions are shown to be substantially similar."

We find that the rate assailed is not unreasonable or unduly prejudicial. The complaint will be dismissed.

No. 11594.

NATIONAL ASBESTOS MANUFACTURING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND CENTRAL RAIL-
ROAD COMPANY OF NEW JERSEY.

Submitted November 29, 1920. Decided March 3, 1921.

Rate during federal control on asphaltum, in carloads, from Bayonne, Constable Hook, and Warners, N. J., to Jersey Avenue Station, Jersey City, N. J., found to have been unreasonable. Reparation awarded.

George L. Horn for complainant.

John F. Finerty, Royal McKenna, A. H. Elder, and H. B. Thomas for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant is a corporation manufacturing asphalt roofing at Jersey City, N. J. By complaint filed July 6, 1920, it alleged that the rate of 7 cents per 100 pounds charged by defendants on 90 carloads of asphaltum shipped from Bayonne, Constable Hook, and Warners, N. J., to Jersey Avenue Station, Jersey City, during the period between October 12, 1918, and November 25, 1919, inclusive, was unjust and unreasonable to the extent that it exceeded 5 cents. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

The shipments aggregated 5,174,029 pounds and moved in tank cars and drums over the Central of New Jersey from Bayonne, Constable Hook, and Warners to destination, for distances of 5.1, 7.1, and 14 miles, respectively. Charges were collected at the applicable

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sixth-class rate of 7 cents. On February 16, 1920, defendants established a commodity rate of 5 cents from Bayonne and Constable Hook to Jersey Avenue Station.

Complainant compares the rate charged with the following rates on asphaltum contemporaneously maintained by defendants between near-by points:

From Bayonne, N. J., to—	Rate.
Aldene, N. J., 8 miles.....	4.5 cents
Cranford, N. J., 8 miles.....	4.5 cents
Roselle, N. J., 8 miles.....	4.5 cents
Manville, N. J., 28 miles.....	6.5 cents

Complainant also cites a commodity rate of 5 cents established by defendants December 23, 1918, from Warners, and March 31, 1919, from Constable Hook and Bayonne, to West Side Avenue Station, Jersey City, a point about 1 mile more distant from the points of origin than Jersey Avenue Station.

Defendants urge that the movement to Jersey Avenue Station is more difficult than to West Side Avenue Station, as it necessitates crossing the Lehigh Valley yard tracks, which results in delay and inconvenience. They further say that the rates to the points specified in the foregoing table were lower because delivery to such points is less expensive than it is to points in the congested district of Jersey City.

The rate of 7 cents on a car of 58,000 pounds, approximately the average weight of complainant's shipments, yielded \$40.60 per car; \$7.96, \$5.72 and \$2.90 per car-mile; 27.5, 19.7, and 10 cents per ton-mile from Bayonne, Constable Hook, and Warners, respectively. A 5-cent rate would have yielded \$29 per car; \$5.69, \$4.08, and \$2.07 per car-mile; and 19.6, 14.1, and 7.1 cents per ton-mile.

We find that the rate assailed was unreasonable to the extent that it exceeded 5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,033.96, with interest.

An appropriate order will be entered.

61 I. C. C.

No. 11539.

PITTSBURGH CRUCIBLE STEEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

Submitted December 8, 1920. Decided March 3, 1921.

Rate on limestone, in carloads, from Williamson, Pa., to Midland, Pa., during federal control, found not unreasonable. Complaint dismissed.

Allen H. Kerr for complainant.

Guernsey Orcutt for defendants.

John F. Finerty and *Royal McKenna* for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. Upon consideration of the record we have reached conclusions differing from those recommended by him.

Complainant, a corporation manufacturing steel at Midland, Pa., by complaint filed June 11, 1920, alleges that the rate of \$2.20 per long ton charged on 20 carloads of limestone, shipped from Williamson, Pa., to Midland, during the period from June 13 to 15, 1918, inclusive, was unjust and unreasonable. We are asked to award reparation. Rates will be stated in amounts per long ton.

Midland is 36.5 miles west of Pittsburgh, Pa., on the Pennsylvania. Williamson is on a branch line of the Cumberland Valley, 7 miles from its junction with the main line just south of Marion, Pa. The shipments moved intrastate over the Cumberland Valley to Harrisburg, Pa., and the Pennsylvania beyond, 345 miles. Charges were collected at the applicable commodity rate of \$2.20.

Prior to 1918 complainant obtained limestone from Martinsburg and Bunker Hill, W. Va. These points are on the main line of the Cumberland Valley about 35 and 45 miles, respectively, south of Marion. Martinsburg is also served by the Baltimore & Ohio, and the short line from the three points to Midland is over that road from Martinsburg to Allegheny, Pa., and the Pennsylvania beyond, the distances being: from Martinsburg 265 miles, from Bunker Hill

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275 miles, and from Williamson 307 miles. Early in 1918, complainant found it necessary to obtain an additional supply of limestone from Williamson, and requested defendants to establish from that point a rate of \$1.20, this being the rate then in effect from Martinsburg over the short line. Effective August 5, 1918, defendants published a rate of \$1.40, which is equivalent to a rate of \$1.20 as increased under general order No. 28 of the Director General of Railroads.

When the shipments moved there were in effect from Bunker Hill to Midland commodity rates of \$1.30 via Harrisburg and \$1.25 via the short line. Complainant contends that a reasonable rate on the shipments would not have exceeded the rates from Martinsburg and Bunker Hill, more distant points over the route of movement. As Williamson is on a branch line it is not intermediate to Bunker Hill. The rate of \$1.20 from Martinsburg applied only over the short line.

It was stated on behalf of complainant that the rate of \$2.20 was a paper rate under which there was no record of any other shipments ever having moved. The limestone comprising these shipments was used for furnace flux, is a low-grade commodity, loads heavily, and at the time of shipment was worth less than \$2 a ton. The present rate is satisfactory to complainant.

Defendants urge that this traffic was part of an emergency movement which has entirely ceased, and that the voluntary reduction of the rate at the request of complainant should not be construed as an admission of the unreasonableness of the former rate. An exhibit was introduced by defendants showing contemporaneous rates to other destinations for comparable distances which were as high as, or higher than, those charged. These other destinations lie in a different direction in trunk line territory, where the rate construction and conditions are entirely different, and it was not shown that any shipments ever moved under those rates.

The rate assailed yielded net ton-mile earnings of 5.7 mills. The rates of \$1.20 and \$1.30 via the route of movement would yield 8.1 mills and 3.4 mills, respectively.

We have repeatedly held that the voluntary reduction of a rate by carriers is not sufficient ground upon which to base a finding that the former rate was unreasonable or that reparation should be awarded. We find that the rate assailed was not unreasonable. The complaint will be dismissed.

61 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1239.
SALT FROM UTAH TO SAN FRANCISCO, CALIF.

Submitted March 3, 1921. Decided March 17, 1921.

Proposed changes in rates on salt, carloads, from Burmester and Salduro, Utah, and Reno, Nev., to San Francisco, Calif., and points intermediate thereto, found justified. Order of suspension vacated and proceeding discontinued.

Lester J. Hinsdale and James S. Moore, jr., for respondents.

John S. Willis for protestants.

R. K. Cobb for intervenor.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to become effective November 19, 1920, the Western Pacific Railroad, hereinafter termed respondent, proposes to reduce rates on salt in carloads from Burmester and Salduro, Utah, and Reno, Nev., to San Francisco, Calif., and to cancel certain rates on the same commodity from Salduro and Reno to points intermediate to San Francisco which carry minimum weights lower than those provided in connection with the proposed reduced rates. Upon protest of salt producers at San Francisco Bay points, hereinafter referred to as the bay producers, and manufacturing and commercial organizations at San Francisco and Oakland, Calif., the proposed schedules were suspended until April 18, 1921. If the suspended schedules are permitted to become effective the reduced rates to San Francisco will apply to all intermediate points, resulting in reductions in the rates and increases in the carload minima to the intermediate points. Rates will be stated in cents per 100 pounds. The Capell Salt Company, which operates a plant at Salduro, intervened in support of the proposed rates.

Respondent states that west of Salt Lake City its line traverses a section where comparatively little tonnage originates, and that to build up the salt industry in this section and to create a movement of salt to California, with the attendant long single-line haul over its rails in the direction of its normal empty-car movement, it established during 1915 and 1916 rates of 15 cents from Salduro and 17.5 cents from Burmester to San Francisco; that these rates

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were applied to intermediate points and, although generally higher than rates contemporaneously in effect from bay points, a limited tonnage developed thereunder; that on June 25, 1918, rates from Salduro and Burmester were increased under general order No. 28 of the Director General of Railroads to 19 cents and 22 cents, respectively, and on August 26, 1920, under *Increased Rates, 1920*, 58 I. C. C., 220, were further increased to 24 cents and 27.5 cents; that these increases, while no greater from a percentage standpoint than the increases made in the intrastate rates from bay points to the same destinations, so widened the differentials between rates from Salduro and Burmester on the one hand and bay points on the other that the Utah producers could no longer compete in the California trade and the movement from Utah practically ceased, such few shipments as moved subsequent to August 26 being in fulfillment of sales made prior to that date. The intention of the proposed changes, generally speaking, is to restore the rates to the basis which prevailed prior to our order in *Increased Rates, 1920, supra*, and represents an effort on the part of respondent to bring them down to a level where the traffic will again move. Salduro and Burmester appear to be the chief points of production. It is proposed to give Reno the same rates as Salduro. Respondent does not contend that the proposed rates are fully compensatory but states that they will pay something over the cost of transportation and afford a contribution to its fixed expenses.

Protestants take the position that central California is the natural distributing territory for the bay producers and that considering the greater distance from the Utah points rates which will permit the Utah producers to ship into this territory in competition with the bay producers must be unduly prejudicial to the bay producers and preferential of the Utah producers. Some of the bay producers are not situated on railroads and must bring their products to the railroads by dray or boat at estimated costs ranging from \$1.25 to \$1.70 per ton. Protestants contend that these extra costs should be considered as a part of the transportation charges which these producers are compelled to pay. Such expenses are a part of the costs of production which we may not properly make a basis for readjusting rates. *Milling Logs in Transit on Tap Lines*, 40 I. C. C., 597, *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 30 I. C. C., 597. Furthermore, other bay producers have direct rail service and have the same rates over the lines serving their plants as apply from San Francisco proper.

To practically every important consuming point on respondent's line in California the rates from San Francisco are lower than the proposed rates. At Oroville and certain comparatively unimportant

points east thereof the proposed rates from Salduro are less than the San Francisco rates. The difference at Oroville is 30 cents per ton. To these points respondent has signified its willingness to establish rates from San Francisco that will not exceed the proposed rates from Salduro. From Burmester the proposed rates are in all instances higher than from San Francisco.

In *Increased Rates, 1920, supra*, we said:

Most of the factors with which we are dealing are constantly changing. It is impossible to forecast with any degree of certainty what the volume of traffic will be. The general price level is changing from month to month and from day to day. It is impracticable at this time to adjust all of the rates on individual commodities. The rates to be established on the basis hereinbefore approved must necessarily be subject to such readjustments as the facts may warrant. It is conceded by the carriers that readjustments will be necessary. It is expected that shippers will take these matters up in the first instance with the carriers, and the latter will be expected to deal promptly and effectively therewith, to the end that necessary readjustments may be made in as many instances as practicable without appeal to us.

The instant case presents such a situation. The uncontroverted testimony is that except to perhaps a few comparatively unimportant points there can be no movement from these points of origin under the present rates, and that unless the proposed rates are allowed to go into effect respondent will be deprived of needed revenue.

We are of opinion and find that respondents have justified the proposed changes and an order vacating the suspension and discontinuing the proceeding will be entered.

EASTMAN, *Commissioner*, dissents.

61 I. C. C.

No. 11420.

MARSHALL-YOUNG COMPANY

v.

DIRECTOR GENERAL, AS AGENT, MIDLAND VALLEY
RAILROAD COMPANY, ET AL.

Submitted September 28, 1920. Decided March 1, 1921.

Rate on returned empty beer-substitute carriers, in carloads, from Tulsa, Okla., to Denver, Colo., found unreasonable. Reasonable maximum rate prescribed for the future and reparation awarded.

E. N. Adams for complainant.

James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in buying and selling near-beer at Tulsa, Okla. By complaint, filed April 22, 1920, it alleges that the rate charged on a carload of returned empty beer carriers shipped July 25, 1918, from Tulsa to Denver, Colo., was unreasonable. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates herein will be stated in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipment, weighing 22,600 pounds, consisted of cases, or crates, containing returned empty near-beer or beer-substitute bottles, hereinafter termed beer carriers. It moved from Tulsa over the lines of the Midland Valley to Wichita, Kans., Missouri Pacific to Pueblo, Colo., and Denver & Rio Grande beyond, 743 miles.

Freight charges in the sum of \$113.57 were collected at the applicable rate of 50.25 cents, one-half the fourth-class rate, governed by the western classification. The empty carriers usually were returned by the same route over which the filled carriers originally moved.

Effective December 30, 1919, the rating for returned empty beer carriers was increased to class D. The class-D rate is 52.5 cents over the route of movement.

Complainant's witness testified that a commodity rate of 30.5 cents, minimum 20,000 pounds, was and is in effect over three other routes

from Tulsa to Denver, ranging from 33 to 106 miles longer than the route of movement; that over all four routes a commodity rate of 66.5 cents is maintained on shipments of beer substitute and near beer from Denver and other Colorado points to points in Oklahoma; that usually the same class and commodity rates prevail over all routes on traffic in this territory; and that both the Missouri Pacific and Denver & Rio Grande are parties to the 30.5-cent rate published by other lines.

Complainant contends that a return shipment really constitutes a part of the whole movement, as a carload of empty beer carriers is generally ready to be sent back when a car of filled carriers is delivered. We have repeatedly found that the "returned" element should be disregarded. *Reduced Rates on Returned Shipments*, 19 I. C. C., 409, 418; *Rates on Tin Cans and Other Commodities*, 37 I. C. C., 360. It urges that since defendants have the short-line route they should establish the rate of 30.5 cents for the return haul of the empty carriers.

Defendants insist that a rate of 30.5 cents from Tulsa would be out of line with other rates in that general territory. There is a rate of 37.5 cents to Denver from Coffeyville, Kans., 739 miles, and from Kansas City 640 miles where the hauls are 4 and 103 miles shorter, respectively. The same rate also applied from all points taking Missouri River rates to Denver, including many points in Kansas and Missouri. Defendants express a willingness to pay reparation to the basis of a rate of 45 cents. Their witness said that this is the rate from Fort Smith, Ark., to Denver, and that the basis of rates generally between Colorado common points and Oklahoma is the combination on the Kansas border with the Fort Smith rate as a maximum. Fort Smith is 149.3 miles east and south of Tulsa.

Based upon the weight of this shipment the rate charged yielded car-mile revenues of 15.29 cents. The class-D rate would yield 15.97 cents and the rate sought 9.28 cents. The ton-mile earnings under the rate charged were 13.5 mills; under a rate of 37.5 cents they would have been 10.1 mills.

We find that the rate assailed was unreasonable to the extent that it exceeded 37.5 cents per 100 pounds, and that the present rate is, and for the future will be, unreasonable to the same extent, subject to the increases authorized in *Increased Rates, 1920, supra*; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$28.82, with interest, from John Barton Payne, Director General of Railroads, as Agent.

An order will be entered accordingly.

HALL, *Commissioner*, dissenting:

Complainant had and still has three other available routes over which the rate sought applies, and routed the shipment as it did under the misapprehension that the same rate also applied over the fourth route used. This fourth route has not been used by it before or since, and is plainly not needed. Despite defendants' admission I remain unconvinced that on a movement from Tulsa to Denver, made subsequent to the increases under general order No. 28 of the Director General, a rate which yielded 15.29 cents per car-mile was unreasonable, and a rate yielding 11.4 cents would have been reasonable. The complaint should be dismissed.

61 L. C. C.

No. 11305.¹

A. O. ANDERSON & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.

Submitted September 15, 1920. Decided March 3, 1921.

Charges on iron and steel articles, in carloads, shipped during 1918 from points in Illinois and Pennsylvania to San Francisco, Calif., and Seattle, Wash., for export, found unreasonable. Reparation awarded.

M. H. Peterson for complainants.

E. W. Camp, C. W. Durbrow, and Elmer Westlake for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

To the report proposed by the examiner defendants excepted.

These cases were heard together and will be disposed of in one report. Complainants are corporations engaged in the importing and exporting business at San Francisco, Calif. By complaints seasonably filed they allege that the charges collected by defendants on 17 carloads of iron and steel articles, including rails, bars, band iron, and nails, shipped during the year 1918 from Grand Crossing and Chicago, Ill., and Ellwood City, Leechburg, and Pittsburgh, Pa., to San Francisco or Seattle, Wash., for export, and which were exported to the orient, were unreasonable and unduly prejudicial. We are asked to award reparation. Rates will be stated in amounts per 100 pounds.

The shipments all moved on domestic bills of lading bearing the notation "for export," or designating the ultimate destination.

At the time of movement the initial lines would accept traffic for export only upon presentation of permits issued by the terminal lines,

¹ This report also embraces No. 11307, *W. R. Grace & Company v. Director General, as Agent, Chicago, Burlington & Quincy Railroad Company et al.*; No. 11307 (Sub-No. 1), *Same v. Director General, as Agent, Illinois Central Railroad Company, et al.*; No. 11307 (Sub-No. 2), *China Agency & Trading Company v. Director General, as Agent, Atchafon, Topeka & Santa Fe Railway Company, et al.*; and No. 11308, *Oriental Products Company, Inc., v. Director General, as Agent, Chicago, Milwaukee & St. Paul Railway Company, et al.*

a prerequisite to the issuance of such permits being the reservation of vessel space for the movement from the ports. These shipments were covered by the necessary permits. After they reached the ports ocean bills of lading were executed by complainants in accordance with the reservations previously made, and the articles were exported without unusual delay.

Defendants had in effect schedules of transcontinental export rates on iron and steel articles to Pacific coast ports, those applicable to the articles here under consideration from the points of origin to San Francisco and Seattle ranging from 40 cents to 85 cents. It was provided, in substance, that export rates to San Francisco would apply only on freight originally consigned through with rail, port, and ocean charges fully prepaid or guaranteed from point of origin to a specific destination beyond the port of exit, such destination being shown in the bill of lading issued at the time of shipment and for which through export bill of lading was issued prior to arrival of the freight at the port of exit. To Seattle it was provided, effective December 26, 1918, that the export rates would apply only on freight for which a through export bill of lading had been issued in exchange for the original shipping receipt or domestic bill of lading within 15 days from the date thereof. The terms of these rules were not complied with by complainants on account of negligence or ignorance of their employees, or by reason of delays attending the commercial features of the transactions, with the result that the carriers assessed domestic rates ranging from 65 cents to \$1.25 on these shipments, plus certain terminal charges.

Since the movement defendants' rules have been modified so as to permit the application of export rates plus certain terminal charges to shipments handled in the same manner as those here under consideration.

Complainants do not attack the measure of the domestic rates as such. Their sole contention is that these shipments were in fact exported in the same manner as they would have been if the rules described had been complied with; that assessment of the domestic rates was in the nature of a penalty for failure to comply with those rules; and that the charges collected were unreasonable to the extent that they exceeded those that would have accrued at the export rates, plus terminal charges, in accordance with the provisions of the tariffs subsequently established.

In justification of the rules defendants' witness testified that prior to and during 1918 their facilities at the Pacific coast ports were greatly congested, due in large measure to the consignment of traffic to the ports for export without previous reservation of ocean space;

the inability of owners to secure vessel space for shipments after they reached the ports; and the inability of carriers, in some cases, to ascertain the identity of the owners for the purpose of obtaining disposition orders; and that the rules were established as an emergency measure in order to relieve the congestion and insure the passage of export shipments through the ports without unnecessary delay. They contend that complainants had ample time and opportunity to comply with the rules and assert that the domestic rates charged were notoriously low.

Conceding generally the necessity for and the propriety of tariff rules such as these in order to relieve congestion at the ports, it would appear that their application to these shipments which did not contribute to congestion at the ports any more than they would have done if handled in strict conformity with the rules, resulted in charges that under the attending circumstances were unreasonable in comparison with those contemporaneously applicable to other export shipments handled in substantially the same manner, but in connection with which the formalities prescribed by the rules were complied with.

We find that the application of the tariff provisions to these shipments resulted in charges which were unreasonable to the extent that they exceeded those that would have accrued at the export rates plus terminal charges which would apply to similar shipments under tariff provisions subsequently established; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued under the findings herein; and that they are entitled to reparation with interest. Complainants should comply with rule V of the Rules of Practice.

HALL, *Commissioner*, dissenting:

I doubt the soundness of the conclusions stated in the majority report. The domestic rate and rules are not found unreasonable, but it is found that their application to *these* shipments resulted in unreasonable charges. Conditions in 1918 compelled the carriers to adopt the rules under which these shipments moved. The statute required that the tariff should be strictly applied. In my opinion the complaints should be dismissed.

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No. 10514.

SOUTH BEND CHAMBER OF COMMERCE ET AL.

v.

DIRECTOR GENERAL, BALTIMORE & OHIO RAILROAD
COMPANY, ET AL.

Submitted January 7, 1921. Decided March 15, 1921.

Upon further hearing, finding in 57 I. C. C., 215, as to rates between South Bend, Mishawaka, Elkhart, Goshen, Nappanee, and Michigan City, Ind., and points in eastern trunk line and New England territories affirmed. Finding modified as to grouping of Holland, Mich.

C. R. Hillyer, Frank A. Larish, and James F. Dougherty for complainants; and *Nuel D. Belnap, John S. Burchmore, and Luther M. Walter* for Chamber of Commerce of Michigan City, Ind.

C. H. Rodehaver for Niles, Mich., Chamber of Commerce; *Ernest L. Ewing* for Grand Rapids Traffic Club and others; *Thomas B. Moore and Beaumont, Smith & Harris* for Michigan Manufacturers Association; *William A. Slater* for Grand Rapids Association of Commerce and Michigan Traffic League; *C. P. Thomson* for Grand Rapids Furniture Manufacturers Association; *R. L. Tuttle* for American Box Board Company; *Frank E. Coombs* for Benton Harbor Chamber of Commerce, St. Joseph Chamber of Commerce, and Michigan State Farm Bureau; *George J. Bolander* for Kalamazoo Chamber of Commerce; *Harris E. Galpin* for Muskegon Employers Association and Muskegon Chamber of Commerce; and *Frank G. Pick* for Flint Board of Commerce and Michigan Traffic League.

John C. Bills, D. P. Connell, E. M. Davis, and L. H. Strasser for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

MEYER, Commissioner:

In the original report in 57 I. C. C., 215, decided March 2, 1920, we found that class and commodity rates between Michigan City, South Bend, Mishawaka, Elkhart, Goshen, and Nappanee, Ind., and points in eastern trunk line and New England territories, were relatively unreasonable and unduly prejudicial to such cities and unduly preferential of cities in central and northern Ohio, and in Michigan west of the line of the New York Central Railroad from Elkhart to Grand Rapids, Mich., and south of the line of the Grand
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Trunk Western from Grand Rapids to Grand Haven, Mich; that the undue prejudice with respect to Ohio points should be removed by reducing the percentage of South Bend and associated cities to 94 per cent of the New York-Chicago rates and of Michigan City to 96 per cent, and with respect to the southwestern Michigan points could be removed by increasing the percentage of Niles, Buchanan, Hartford, Holland, and points east thereof to the line of the New York Central above described to 94 per cent and points west thereof to 96 per cent.

Under date of January 23, 1918, fourth section order No 7149 was issued authorizing carriers operating through Ohio and Indiana to establish class and commodity rates prescribed by us in the *Michigan Percentage Cases*, 47 I. C. C., 409, between points in Michigan, on the one hand, and all points east of the western termini of the eastern trunk lines, on the other, without observing the long-and-short-haul provision of the fourth section of the act to regulate commerce. In the present case as the short-line routes to Kalamazoo and Grand Rapids and points on and east of the line of the New York Central from Elkhart to Grand Rapids are not through the complaining cities, and for other reasons stated in the original report, we permitted the temporary relief granted by this fourth section order to stand, but as the routes and distances to points west and south of the New York Central and Grand Trunk Western from Elkhart to Grand Haven were not such as to justify lower rates than at the complaining cities, that portion of the fourth section order permitting the maintenance of lower rates to such points than to intermediate points was rescinded.

Upon petitions of the defendants and of the Michigan Manufacturers Association, intervener, this proceeding was reopened "for further hearing as to the effect upon the adjustment of rates of the fourth section of the act as amended by the Transportation Act, 1920," the effective dates of the order in the original case and of amended fourth section order No. 7149 being postponed until our further order.

The fourth section of the act to regulate commerce was amended by the transportation act, 1920, by adding:

And if a circuitous rail line or route is, because of such circuitry, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points; * * * *And provided further*, That rates, fares, or charges existing at the time of the passage of this amendatory Act by virtue of orders of the Commission or as to which application has there-

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tofore been filed with the Commission and not yet acted upon, shall not be required to be changed by reason of the provision of this section until the further order of or a determination by the Commission.

We are urged, on this new angle of the adjustment, as we were in the original cases, not only to consider the distances from New York to the complaining cities, but to take into consideration those from Philadelphia, Pa., Baltimore, Md., and from Virginia cities, the rates between which and central freight association territory are made, in respect of Philadelphia and Baltimore, on the basis of port differentials under New York, and, in respect of the Virginia cities, in relation to the rates from and to Baltimore. Much of the evidence was directed to the effect of the adjustment on the rates to other groups and other territories rather than to the effect of the amendment of the fourth section by the transportation act, 1920, on the adjustment ordered to be maintained. Briefly the defendants assert that compliance with the order will have a tendency to disorganize the entire percentage adjustment in the portion of central freight association territory affected; that unless the Chicago, Indianapolis & Louisville Railway Company, not a party to this proceeding, abandons competition for traffic from Michigan City to Richmond, Va., and other eastern points, the adjustment would extend to Louisville, Ky., and by relation to Lexington, Ky.; that Louisville has always been maintained on a parity with Chicago, and that Chicago might be affected. It is also contended that a compliance with the order will seriously impair the revenues of the carriers to which they have recently been held entitled in *Increased Rates, 1920*, 58 I. C. C., 220.

Compliance with our order requires that southwestern Michigan, now in the 92 per cent group, be divided into three groups, 92, 94, and 96 per cent. The highest percentage group would be west and south of a line drawn through Niles, Buchanan, Hartford, Grand Junction, and Holland; the new 94 per cent group would lie immediately east of that line, and the new western boundary of the 92 per cent group would be the line of the New York Central from Elkhart to Grand Rapids and that of the Grand Trunk Western Railway from Grand Rapids to Grand Haven. Traffic of the Pere Marquette between Muskegon, Grand Haven, and eastern trunk line territory is via Holland. The distances from Baltimore, Philadelphia, and Richmond to Holland are "no longer" than the short-line distances via the direct lines to Muskegon or Grand Haven, and the same situation applies to local points between Muskegon and Grand Haven. Therefore, since the decision herein was rendered shortly after the passage of the transportation act, 1920, counsel for the Michigan lines contends that we were without power to grant relief from the operation of the fourth section between eastern trunk line territory and Hol-

land, and recommends that this fourth section departure be eliminated by increasing the percentage of Muskegon and Grand Haven to 94 per cent. It would also be eliminated by continuing Holland as a point in the 92 per cent group. Based on their short-line distances, Grand Haven, Muskegon, and Holland would be entitled respectively to 89, 90, and 92 per cent. The Michigan interveners refer to the fact that Grand Rapids, Muskegon, and Grand Haven for many years have been in the same percentage group and refer to our finding in the *Michigan Percentage Cases, supra*, that that relation should not be disturbed.

The line of the Pere Marquette runs through Hartford and Benton Harbor to Buchanan. Via the direct lines Benton Harbor is farther distant from eastern points than is Buchanan, but Watervliet the next station west of Hartford, is less distant from New York than Buchanan. It is necessary therefore to include Watervliet in the 94 per cent-group. Fourth section relief will be granted to the Pere Marquette route to maintain rates to and from Buchanan lower than to and from intermediate points, provided that the authority granted shall not extend to intermediate points as to which the haul of the indirect lines is not longer than that of the direct lines or routes between the competitive points.

The Chicago, Indianapolis & Louisville Railroad operates directly south from Michigan City, through various points in Indiana, at which it has connections with lines extending eastwardly, through New Albany and Jeffersonville, Ind., to Louisville, Ky. It extends from the easternmost edge of the 100 per cent group at Michigan City almost to the western edge of that group at Mitchell, Ind. Its line also runs to Indianapolis, over which it operates routes in connection with eastern trunk lines. We granted no relief from the provisions of the fourth section in respect of the new percentage to Michigan City. That situation does not appear to have been changed by the amendment of the fourth section by the transportation act, 1920, except to limit our authority to grant relief for which no application has been made. Between New York and Michigan City its route via Louisville is very circuitous, but from Richmond the distance via the direct route through Cincinnati, Ohio, to Michigan City, 827 miles, is greater than to practically every point through which it operates via Louisville, and unless it reduced the percentage basis to intermediate stations either via Louisville or Indianapolis it might be compelled to forego Michigan City traffic.

Louisville is the gateway of reasonably direct lines from the Virginia cities only via lines operating south of the Potomac and Ohio rivers and the rates via these lines from Virginia cities to Louisville are lower than the rates to Michigan City. The record shows that a

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comparatively small amount of traffic moved between Michigan City and eastern territory via these routes during the period for which information is shown.

The short route between South Bend and New York is via the Michigan Central Railroad, Black Rock, N. Y., and the Delaware, Lackawanna & Western Railroad, 820 miles. Via the lines of the Pennsylvania system the distance is 836 miles. However, the last-named carrier is the short route from South Bend to Philadelphia, Baltimore, or Richmond. The distances to New York from stations on the Pennsylvania Railroad south of South Bend to but not including Plymouth are greater than the distances from South Bend via the direct line. From stations Plymouth and east thereof the distances are less than from South Bend. But defendants assert relief from the operation of the fourth section in respect of the stations north of Plymouth would be of no value because of the relationship of interior New York points to New York, the port differentials, and the relationship of Virginia cities to Baltimore. It is therefore contended that the Pennsylvania would be compelled, if the postponed order in this case is made effective, to publish rates applicable from and to South Bend to include all stations to but not including Fort Wayne, Ind.

The Cleveland, Cincinnati, Chicago & St. Louis Railway is the short line from Elkhart and Goshen to the Virginia cities, but, otherwise, the conditions are essentially the same as those shown in respect of South Bend.

Three situations confront us, first, Michigan City being served by the Chicago, Indianapolis & Louisville, not a party defendant herein; second, a reduction of the percentages applying between South Bend and its associated cities from 96 to 94 per cent considered in relation to the amended fourth section; and, third, whether in the issuance of the fourth section order, particularly in respect of a very few Michigan points, we exceeded the authority conferred on us by the statute.

Manifestly, we prescribed rates to Michigan City via the lines of the carriers parties defendant, and therefore the Chicago, Indianapolis & Louisville is not required to meet at Michigan City the rates of the defendants. In the *Michigan Percentage Cases* the alleged effects of according Michigan points lower percentages than then obtained were most insistently called to our attention, especially with reference to South Bend and other points in its vicinity. It is for the Chicago, Indianapolis & Louisville to determine whether or not it will meet the competition of the other lines and whether or not it will file application under the provisions of the fourth section to be relieved from its operation.

No violation of the fourth section at Michigan City was created, and no fourth section order was issued in respect thereto. If the Chicago, Indianapolis & Louisville should elect to meet the rates of the direct lines and apply to us for relief from the operation of the fourth section, we will consider giving it like treatment to that accorded other lines operating in central freight association territory under similar circumstances.

In respect of South Bend, its associated cities, and the Michigan points specifically dealt with, fourth section applications seeking relief were on file; temporary relief had been granted following the *Michigan Percentage Cases* prior to the recent amendment of the fourth section. The proviso of that section, if it were necessary, fully covered the situation. However, we merely rescinded a portion of the temporary relief permitted in the *Michigan Percentage Cases*. Recision of a portion of an existing permission restricting the relief theretofore granted to the carriers can not be held to have violated the amended fourth section. The temporary relief granted was in all respects similar to that protected by applications on file with us covering situations prevalent over the entire central freight association territory.

We are of the opinion and find that the findings and order in this proceeding should be modified by eliminating Holland, Mich., from the 94 per cent group, and including Wateryliet in said group, but in other respects the decision is affirmed.

Carriers having indirect routes will be authorized to maintain rates on classes and commodities between points in Michigan and Indiana and points in eastern trunk line and New England territories the same as rates via the direct lines and to maintain higher rates at intermediate points, provided the rates at said intermediate points do not exceed rates for equal distances to or from competitive points via the direct lines.

Appropriate orders will be entered.

HALL, *Commissioner*, dissents.

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INVESTIGATION AND SUSPENSION DOCKET No. 1236.
 ABSORPTION OF SWITCHING CHARGES AT FORT
 WORTH, TEX.

Submitted February 23, 1921. Decided March 14, 1921.

Proposed increased through charges on shipments to and from industries on the Fort Worth Belt Railway, under tariff rules limiting the amount of switching charges absorbed, found not justified. Suspended schedules ordered canceled.

A. B. Enoch for respondents.

Robert Thompson for Texas & Pacific Railway Company and its receivers; *J. F. Garvin* for Missouri, Kansas & Texas Railway Company of Texas, and its receiver; *William M. Short* and *Capps, Cantey, Hanger & Short* for Fort Worth Belt Railway Company; and *Ed. P. Byars* for Fort Worth Freight Bureau and Fort Worth Chamber of Commerce, interveners.

B. D. Rynder for Swift & Company; *Paul E. Blanchard* for Armour & Company; and *S. C. Rowe* for Cattle Raisers' Association of Texas, protestants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

By DIVISION 2:

By schedules filed to become effective on various dates between November 15 and December 1, 1920, respondents propose to restrict their absorptions of switching charges of the Fort Worth Belt Railway on all interstate traffic from or to industries and public stockyards on its line at Fort Worth, Tex., to specific amounts which are less than the present switching charges of the Fort Worth Belt. The proposed restricted absorptions would result in increases in the through charges. Upon protest of Swift & Company, Armour & Company, Cattle Raisers' Association of Texas, Texas Live Stock Shippers Protective League, and American National Live Stock Association, the schedules were suspended until April 14, 1921. The Fort Worth Belt Railway Company, hereinafter called the Belt, and certain other carriers intervened.

The Belt owns and operates 18.9 miles of switch track and 7 switch engines, but owns no other equipment. It switches carload freight between industries and public stockyards on its lines and its

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junctions with the road-haul carriers only upon orders from the latter and does not deal directly with shippers. The Belt's tracks connect with those of three road-haul carriers at Belt Junction, and with those of seven others at North Fort Worth. The average hauls apparently range between 1 and 3 miles. The public stockyards, the only terminal facility for shipments of live stock, and the packing houses of Swift & Company and Armour & Company are reached only over the tracks of the Belt. Of numerous other industries in and near Fort Worth, some are served by the Belt and some by road-haul carriers.

The Belt increased its switching charges under authority of *Increased Rates*, 1920, 58 I. C. C., 220, and subsequently increased them again by its tariff I. C. C. No. 26, effective October 16, 1920. The increased charges on interstate traffic thus established were not protested and are the same as those made effective on intrastate traffic in September, 1920, under authority of the Railroad Commission of Texas, as follows: From North Fort Worth, live stock \$3.85 per car, other commodities \$4.35; from Belt Junction, live stock \$4.35, other commodities \$4.85. The new charges were 85 cents per car higher than those in effect prior to October 16, 1920, except that on live stock from North Fort Worth they were increased by \$1.35 per car.

For several years respondent road-haul carriers reaching Fort Worth have fully absorbed the Belt's switching charges, but, by the schedules under suspension, they propose to absorb only amounts equaling the Belt's charges in effect prior to October 16. By thus limiting their absorptions increases would result in the through rates on interstate traffic switched by the Belt of \$1.35 per car on live stock from North Fort Worth and 85 cents per car on all other traffic.

The Missouri, Kansas & Texas Railway Company of Texas, which intervened, filed a schedule, which became effective November 19, 1920, limiting its absorptions, just as was done by the respondents. That schedule was not subject to suspension because the intervener in earlier schedules had restricted its absorptions to the specific amounts of the switching charges of the Belt in effect prior to October 16. After the suspension of respondents' schedules herein the Missouri, Kansas & Texas, in order to be on the same footing as the other carriers, secured authority to make effective on short notice a schedule effective January 25, 1921, absorbing the entire amount of the Belt's interchange switching charges.

The Texas & Pacific Railway Company, which intervened, filed a schedule effective November 18, 1920, similar to those of respondents, but there was no protest and the schedule was not suspended.

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After the suspension of respondents' schedules, the Texas & Pacific secured our authority to make effective on short notice a schedule, effective January 12, 1921, absorbing the entire amount of the switching charges.

The St. Louis, San Francisco & Texas Railway Company has continued to absorb all of the Belt's switching charges, and it is not a party to this proceeding.

Respondents rely principally upon the fact that the increases in switching charges, effective October 16, were in addition to those authorized in *Increased Rates, 1920, supra*, which in turn were in addition to prior increases. The Belt's switching charge on live stock between Belt Junction and all its industries was \$2 on February 10, 1918, \$2.50 on January 29, 1919, \$3.50 on August 26, 1920, and \$4.35 on October 16, 1920.

It is not denied that for many years and until October 15, 1920, the rates on interstate traffic generally to and from Fort Worth included delivery at the stockyards and at the industries served not only by the Belt but by all other lines, and that the switching charges of all the carriers at Fort Worth were absorbed by the connecting lines.

The position of the trunk line carriers is that the rates and charges in effect August 25, 1920, as increased under *Increased Rates, 1920, supra*, are reasonable and that they should not be required to absorb switching charges of the Belt exceeding those in effect October 15, 1920. They have offered no evidence to justify the increased through rates which would result from the application of the schedules under suspension. *Absorption of Terminal Charges at Galveston*, 59 I. C. C., 490. At the oral argument they requested that this case be consolidated with *Swift & Co. v. F. W. & D. C. Ry. Co.*, 61 I. C. C., 77, and also asked for a finding with respect to the reasonableness of the present switching charges of the Belt.

The evidence for the Belt tends to show that prior to October 16, 1920, its revenues did not meet operating costs and that the increased switching charges have not since yielded a return on its investment.

The local switching charges of the Belt are not in issue, and we are only concerned in this proceeding with the propriety of the proposed switching absorptions in relation to the through rates between interstate points and industries reached by the Belt. The divisions accorded the Belt in the form of absorptions can not be predicated solely upon the amount of revenue necessary to insure its successful operation. The question of what amount the line-haul carriers should allow the Belt out of the through or joint rates pertains to the matter of divisions and is not in issue. It is improper to attempt forcible adjustment of such an issue between carriers by increasing the through rates which shippers must pay.

The Belt rightfully contends that it is merely a switching agency employed by the line-haul carriers in completion of contracts between the latter and shippers, and that the charges of the Belt should "be a part of the freight charge made to the shipper, and not in addition thereto." It contends further that the line-haul carriers, having provided no place for the delivery of live stock other than at the public stockyards, are responsible for shipments until such delivery has been completed and, therefore, should be required to absorb all necessary switching charges incident thereto; that the transportation act contemplates that necessary switching services incident to such delivery shall be furnished without extra cost to shippers; and that since the Railroad Commission of Texas has authorized the increased switching charges of the Belt, the line-haul carriers should absorb the full amount on interstate traffic just as they are required to do on intrastate traffic. It alleges that the failure to do so while contemporaneously absorbing similar and greater charges at other competitive markets would result in unjust discrimination against the Belt and the industries and stockyards on its line.

Protestants support the latter contention of the Belt with evidence that the line-haul carriers absorb the full amount of switching charges to and from competing live-stock markets such as Oklahoma City, Okla., which is on a rate parity with Fort Worth to certain territories as a result of our decision in *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656. That relationship would be disrupted to the disadvantage of Fort Worth by the application of the suspended schedules.

Protestants further contend that the line-haul rates, as increased pursuant to our authority in *Increased Rates, 1920, supra*, should include deliveries to industries, as heretofore, and that the full amount of the Belt's charges should be absorbed by the line-haul carriers, citing *Absorption of Terminal Charges at Galveston, supra*.

We find that the respondents have not justified the proposed increased through charges. An order will be entered requiring the cancellation of the suspended schedules and discontinuing this proceeding.

61 I. C. C.

No. 11935.

SWIFT & COMPANY ET AL.

v.

FORT WORTH & DENVER CITY RAILWAY COMPANY
ET AL.

Submitted February 23, 1921. Decided March 14, 1921.

Increased through charges on interstate shipments to and from industries on the Fort Worth Belt Railway, at Fort Worth, Tex., under schedules which limited the amount of switching charges absorbed by the Missouri, Kansas & Texas and the Texas & Pacific, found not justified. Proceeding held open on the issue of reparation.

R. D. Rynder for Swift & Company; and *Paul E. Blanchard* for Armour & Company, complainants.

A. B. Enoch and *Robert Thompson* for all defendants except Fort Worth Belt Railway Company; and *William Short* and *Capps, Cantey, Hanger & Short* for Fort Worth Belt Railway Company.

S. C. Rowe for Cattle Raisers' Association of Texas; and *Ed. P. Byars* for Fort Worth Freight Bureau and Fort Worth Chamber of Commerce, interveners.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

By DIVISION 2:

Complainants are corporations operating packing houses at Fort Worth, Tex. By complaint filed November 4, 1920, as amended, they allege that the failure of defendant line-haul carriers to absorb the full amount of the switching charges of the Fort Worth Belt Railway Company on interstate traffic handled from or to industries or stockyards to or from junctions with the Belt at Belt Junction or North Fort Worth would or does result in increased through or joint rates and charges which would be, or are, unjust and unreasonable and which would or do result in undue prejudice and unjust discrimination against interstate commerce. We are asked to establish joint through rates on interstate traffic to and from industries on the Belt Railway which shall not exceed the line-haul rates on like traffic to and from points on the defendants' lines at Fort Worth, and to award reparation.

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When the complaint was filed the schedules of certain defendants limiting the amount of the switching charges of the Belt which they would absorb on interstate traffic were under protest, and on November 19, 1920, were suspended in *Absorption of Switching Charges at Fort Worth*, 61 I. C. C., 73, in which we found that the respondents had not justified the resulting increases in through charges. That decision disposes of the issues in this case with respect to all of the defendants except the Texas & Pacific and the Missouri, Kansas & Texas.

A description of the Belt, its services, and the charges therefor appears in detail in the report above referred to. On October 16, 1920, the Belt increased its switching charges on interstate traffic by \$1.35 per car on live stock from its North Fort Worth connections and 85 cents per car on all other interchange traffic.

The Missouri, Kansas & Texas had provided for the absorption of the specific charges of the Belt in effect prior to October 16, 1920. Beginning on that date the increases in the Belt's charges were assessed against the shippers in addition to the through or joint rates of the Missouri, Kansas & Texas until January 25, 1921, when that line-haul carrier began absorbing the entire charges of the Belt.

The Texas & Pacific provided for the absorption of the entire charges of the Belt prior to and after the latter were increased on October 16, 1920, but effective November 18, 1920, it restricted its absorptions to the amount of the Belt's charges in effect October 15, 1920, prior to the increases. From November 18, 1920, until January 12, 1921, the increases in the Belt's charges were assessed against the shippers in addition to the through or joint rates of the Texas & Pacific. On the latter date that carrier began absorbing the entire charges of the Belt.

The Missouri, Kansas & Texas and the Texas & Pacific connect with the Belt at Belt Junction, and the charges in issue here amounted to 85 cents per car during the periods named.

The evidence in the suspension proceedings was made a part of the record under the formal complaint and the contentions of the parties were practically the same there as here. The voluntary action of the Missouri, Kansas & Texas and the Texas & Pacific in renewing their absorptions of the entire charges of the Belt, and our order in *Absorption of Switching Charges at Fort Worth*, *supra*, will remove the alleged undue prejudice and unjust discrimination.

The prayer for joint rates, in lieu of through rates out of which the switching charges are absorbed, is made in order that shippers served by the Belt may not be subjected to increased charges in the future on account of controversies between the line-haul carriers and the switching line as to the amount which the Belt should receive

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for its services. While we must condemn the attempt of the line-haul carriers and the Belt to force an issue as to their divisional arrangements in this manner, we will not now require a change in the mere form of their tariff publications to preclude a recurrence of such action. The through rates now provide for industry deliveries on the Belt.

We find that the rates and charges assailed between interstate destinations and industries and the stockyards served by the Belt at Fort Worth in connection with the Missouri, Kansas & Texas and the Texas & Pacific were unreasonable during the periods between October 16, 1920, and January 24, 1921; and November 18, 1920, and January 11, 1921; inclusive, respectively, to the extent that they exceeded the line-haul rates from and to Fort Worth to and from the same points on like traffic, viz, to the extent of 85 cents per car. No order for the future is deemed necessary, and the proceeding will be held open for proof with respect to reparation.

61 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1247.
COAL FROM CUMBERLAND RAILROAD TO SOUTHEAST-
ERN POINTS.

Submitted January 26, 1921. Decided March 18, 1921.

Proposed increase of 20 cents per ton in the joint rates on coal from mines on the Cumberland Railroad to points on the Louisville & Nashville and connections in Tennessee, Virginia, the Carolinas, Georgia, Florida, and Alabama found not justified. Suspended schedules ordered canceled and proceeding discontinued.

Charles J. Rixey, W. N. McGehee, and N. W. Proctor for respondents.

C. D. Boyd for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to become effective on November 28, 1920, respondents propose to increase by 20 cents per ton the rates on coal from mines on the Cumberland Railroad, in Kentucky, to destinations on the Louisville & Nashville and connections in Georgia, Alabama, Florida, Tennessee, Virginia, and the Carolinas. Upon protest of the Southern Appalachian Coal Operators Association the operation of these schedules was suspended until April 27, 1921. Rates and divisions of rates will be stated in amounts per net ton. Originating points mentioned are in the state of Kentucky except as otherwise specified.

The Cumberland extends in a southerly direction from its junction with the Louisville & Nashville at Artemus to Anchor, 11.4 miles. A branch extends southwest from Sanford, 2.8 miles north of Anchor, to Wheeler, 3.7 miles. Eight or ten well-established mines, as well as several recently opened wagon mines, are served by the Cumberland. About 95 per cent of its tonnage is coal, aggregating some 15,000 tons or 300 cars per month. The mine capacity is about 1,000 cars per month. Its engines are leased from the Southern, which owns all its capital stock and bonds, and it is supplied with cars by the Louisville & Nashville. The average distance from the mines to Artemus is about 7 miles. These mines are surrounded by shipping points in group 3 of the Louisville & Nashville.

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Artemus, the junction point, is one of them. Formerly the Cumberland's joint rates with the Louisville & Nashville and connections to the southeast were the same in amount as the combinations of the separately established rates to and beyond Artemus, and its local rates to Artemus were 10 cents and 12.5 cents, respectively, from the two groups into which its mines are divided. In *Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co.*, 39 I. C. C., 449, we found these joint rates unreasonable, and prescribed rates, effective August 20, 1916, not to exceed 5 cents higher than the contemporaneous rates from Artemus, and from mines on certain branch lines of the Louisville & Nashville also in group 3. The differential became 6.5 cents on August 26, 1920, following *Increased Rates, 1920*, 58 I. C. C., 220. It would become 26.5 cents under the proposed rates, the increase of 20 cents to accrue to the Cumberland alone. The local rate from Cumberland mines to Artemus is now 50 cents.

The Cumberland's divisions of the joint rates have always exceeded the differential. When the 5-cent differential was established the Cumberland continued to receive divisions of 10 cents and 12.5 cents, respectively, from its two groups. These divisions were increased to 12.2 cents and 15.2 cents following the increases made under general order No. 28 of the Director General of Railroads on June 25, 1918, and were further increased to 15 cents and 19 cents following *Increased Rates, 1920, supra*. They were not increased, however, following *The Fifteen Per Cent Case*, 45 I. C. C., 303. They would be 35 cents and 39 cents under the proposed rates.

The difference between the differentials over Artemus and the Cumberland's divisions has heretofore been absorbed by the Louisville & Nashville as its connections were unwilling to reduce their proportions.

The Cumberland is in the hands of a receiver, and at the time of hearing in December, 1920, was being operated at a loss of about \$2,000 monthly. Its deficits for fiscal years ended June 30 were: \$68,993.05 in 1916, \$58,675.73 in 1917, \$68,119.27 in 1918, and \$16,653.52 in 1919; \$9,420.73 for January and February, 1920, and \$10,223.43 for the five months ended August 31, 1920. It is estimated that the proposed rates would yield additional revenue of \$3,000 per month, based on the present movement of 15,000 tons to all destinations. Only 38 per cent of the total tonnage moves to the southeast. Respondents intend, however, to propose a similar increase of 20 cents on the remaining 62 per cent of the tonnage which moves to northern points, when certain tariff complications have been adjusted by the Louisville & Nashville, which issues the joint tariffs.

Protestant attributes the financial condition of the Cumberland largely to car shortage and contends that if enough cars were fur-

nished the present divisions would yield as much revenue as would the proposed greater divisions upon the amount of traffic that could be moved with the limited number of cars available for some time past. It bases this contention upon an assumed movement of 1,000 cars monthly, the capacity production of the Cumberland mines. Respondents regard this figure as excessive. Computed on the basis of 50 tons per car, the Cumberland mines shipped 7,025 cars in 1915, 7,613 cars in 1916, 5,416 cars in 1917, 4,060 cars in 1918, and 4,605 cars in 1919. Apparently the Cumberland operated at a loss of \$10,223.43 from April to August, inclusive, 1920, when the car supply averaged 40.5 per cent of cars ordered, and at a loss of \$40,087.82 during the corresponding period of 1919, when the car supply averaged 90 per cent. The question of car supply must be considered in its relation to the demand for coal. The record shows a ready market for all coal produced on the Cumberland prior to December, 1920, while the car supply was inadequate, and a lessened demand for coal thereafter when the car supply was ample.

The financial condition of the Cumberland, although an important matter for consideration, does not in itself warrant an increase in rates. The question of divisions is not in issue.

There is no uniformity in differentials over the junction-point rate as between the Cumberland and other short coal feeders of the Louisville & Nashville in Kentucky. Only one other of these feeders connects with the Louisville & Nashville at a point in its group 3. This is the Cumberland & Manchester, which extends from Barbourville, 4 miles north of Artemus, to Manchester, 22.9 miles, with a branch from Horse Creek, 21.9 miles from Barbourville, to Siebert, 2.6 miles. This road serves 17 mines at an average distance of 14.6 miles from Barbourville. Prior to August 12, 1920, the differential over Barbourville on coal shipped from Cumberland & Manchester mines to the southeast was 12.5 cents. On that date it was increased by tariffs which, upon protest, we declined to suspend. The present differentials range from 31.5 cents to 44 cents, compared with the present differential from Cumberland mines of 6.5 cents over Artemus, and the proposed differential of 26.5 cents over Artemus.

The Louisville & Nashville states that it shrinks its earnings from Barbourville and from Artemus by the same amount. Protestant challenges this statement and asserts that the division sheets show that to Atlanta, Ga., for example, out of the rate of \$2.44 on coal from Artemus and Barbourville the Louisville & Nashville's shrinkage is 9.5 cents from Cumberland group-1 mines, 13.5 cents from Cumberland group-2 mines, 31 cents from Cumberland & Manchester group-1 and group-3 mines, and 30.5 cents from Cumberland & Manchester group-2 mines.

The Black Mountain Railroad extends from Burchfield in the Louisville & Nashville's group 4 to Smith, a distance of 6 or 8 miles. The average distance from the mines to Burchfield is 3 miles. The present rates are 6.5 cents higher than from Burchfield, the same in amount as the Cumberland's differential over Artemus. On coal to the southeast from mines on the Black Mountain the joint rates, however, are uniformly 12.5 cents higher than those from mines on the Cumberland, and the average distance is 27 miles greater. The Louisville & Nashville states that it shrinks its divisions out of the joint rates from mines on the Black Mountain by the same amount as from those on the Cumberland.

The Ohio & Kentucky Railroad extends from Ohio & Kentucky Junction, on the Louisville & Nashville to Licking River. The average distance from its 15 mines to Ohio & Kentucky Junction is 12.1 miles. On traffic to central territory the rate is uniformly 26.5 cents higher than from Ohio & Kentucky Junction, the same differential as is here proposed from the Cumberland mines. There appear to be no joint rates published from Ohio & Kentucky mines to the southeast.

The Louisville & Nashville applies the junction-point rate from mines on the Interstate Railroad with which it connects at Appalachia, Va. On coal from mines on the Interstate to Cincinnati, Ohio, for example, the Louisville & Nashville receives \$1.698 for its haul from Appalachia, 88.7 miles beyond Artemus, whereas for its haul from the latter point the same carrier receives \$1.61 from Cumberland group-1 mines and \$1.65 from Cumberland group-2 mines. The application of the junction-point rate from the Interstate mines resulted from our decisions in *Stonega Coke & Coal Co. v. L. & N. R. R. Co.*, 39 I. C. C., 523, and 47 I. C. C., 282. Prior to these decisions the Southern had for many years applied the group rate from those mines.

The Louisville & Nashville also applies the junction-point rate from Alabama mines on the Birmingham Southern. It states that this was not voluntarily done, but was the result of competition of the Atlanta, Birmingham & Atlantic, and contends that the conditions affecting the adjustments from mines on the Interstate in Virginia, and on the Birmingham Southern in Alabama, are substantially different from those affecting the adjustments from mines on the Cumberland and the other short lines named in Kentucky.

Respondents in support of their contention that the proposed rates from Cumberland mines would be reasonable introduced exhibits comparing them with numerous rates to the southeast from mines on the Louisville & Nashville and other carriers serving related groups. While in most instances the ton-mile yield is higher from other
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groups than from the Cumberland mines, the distances are usually much shorter. In some instances the ton-mile earnings from farther distant groups are lower than the yield from the proposed rates from the Cumberland mines. For example, to Atlanta the ton-mile yield under the proposed rates from Cumberland mines is 8.3 mills for 326 miles, compared with 7.92 mills for 308 miles from the Jellico group, and 8.01 mills for 320 miles from the Pittsburgh group. Study of these figures does not justify respondents' contention that an increase of 20 cents in the joint rates is justified. This conclusion is reached independently of protestant's assertion that to 8 of the 14 destinations shown in one of the respondents' principal rate comparisons the distances shown from Cumberland and Louisville & Nashville mines to points in the Carolinas via Atlanta are considerably greater than those through Knoxville.

We find that the proposed increased rates have not been justified and that the schedules under suspension should be canceled. An appropriate order to that effect will be entered and the proceeding discontinued.

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No. 11668.
MANUFACTURERS EXPORT CLEARING HOUSE
v.
DIRECTOR GENERAL, AS AGENT.

• *Submitted December 10, 1920. Decided March 3, 1921.*

Domestic storage charges assessed at Boston, Mass., on 747 cases of preserved pineapples shipped from New York, N. Y., to Boston for export, and subsequently sold in the Boston market for domestic consumption, found applicable and not unreasonable. Complaint dismissed.

Robert A. Hunt for complainant.

George E. Kimball for Director General.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, Robert A. Hunt, is engaged in the export business at New York, N. Y., under the name of Manufacturers Export Clearing House. By complaint filed July 23, 1920, he alleges that the domestic storage charges assessed on 747 cases of preserved pineapples shipped from New York and stored at Mystic Wharf, Boston, Mass., from January 8 to July 3, 1918, were unjust and unreasonable. We are asked to award reparation.

The shipment, aggregating 32,121 pounds, was part of a carload originally intended for export to France, but after its arrival at Mystic Wharf the French government decreed that further shipments of luxuries, including preserved pineapples, should be prohibited entry into France. Complainant sold the pineapples in the Boston markets for domestic consumption. Domestic storage charges approximating \$916.11 were assessed.

Complainant contends that as the shipment was originally intended for export the export instead of the domestic storage charges should have been assessed. He admits that defendant is in no way responsible for the delay which caused the storage charges to accrue, and that the charges assessed were technically applicable. Complainant does not contend that the domestic charges were unreasonable *per se*, but that they were unreasonable by reason of the fact

that they exceeded the export storage charges, which, he contends, under the circumstances should have been assessed.

We find that the domestic storage charges assailed were applicable and not unreasonable. The complaint will be dismissed.

No. 10363.

SOLVAY PROCESS COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY AND DIRECTOR GENERAL, AS AGENT.

Submitted October 12, 1920. Decided March 8, 1921.

Upon further hearing, reparation awarded. Original report, 55 I. C. C., 280.

H. Duane Bruce for complainant.

John F. Finerty for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

In our original report in this case, 55 I. C. C., 280, adopted October 21, 1919, we found that the rates charged by defendants for the transportation of complainant's shipments of limestone in carloads, from Jamesville, N. Y., to Solvay, N. Y., moving after June 25, 1918, were unreasonable, and that complainant was entitled to reparation, with interest, on shipments moving on and after that date. We stated that the amount of reparation due should be determined in the manner provided in rule V of the Rules of Practice and, when so determined, that the entry of an order for reparation would be considered.

Upon supplemental complaint filed June 18, 1920, alleging that defendants refused to check and certify as to the accuracy of statements of the shipments in question submitted to them by complainant under rule V of the Rules of Practice, and praying for additional reparation to include shipments moving between the date of the original report and February 14, 1920, when our order herein became effective, further hearing upon the reparation feature was ordered.

At the further hearing held on October 12, 1920, it was explained that defendants had refused to check and certify as to the accuracy of complainant's reparation statements under the misapprehension that the case was to be reheard.

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Complainant submitted exhibits showing details of the shipments of limestone from Jamesville to Solvay, made during the period from June 25 to September 15, 1918, both inclusive, on which it paid and bore charges at the rate of 40 cents per long ton, and during the period from September 16, 1918, to February 13, 1920, both inclusive, on which it paid and bore charges at the rate of 30 cents per net ton. The rate of 25 cents per long ton found reasonable and prescribed by us was established February 14, 1920.

We find that during the period from June 25 to September 15, 1918, both inclusive, complainant made shipments from and to the points in question aggregating 159,770.81 long tons, on which it paid and bore the freight charges at the established rate of 40 cents per long ton, and during the period from September 16, 1918, to February 13, 1920, both inclusive, shipments aggregating 814,157.52 net tons additional, on which it paid and bore the freight charges at the established rate of 30 cents per net ton; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate of 25 cents per long ton found reasonable in our original report; and that it is entitled to reparation in the sum of \$86,478.63, with interest on the individual excess charges comprising the principal sum at the rate of 6 per cent per annum from the dates on which such charges were paid.

An order awarding reparation will be entered.

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No. 11389.

KELSEY WHEEL COMPANY, INCORPORATED,*v.***YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.**

Submitted November 22, 1920. Decided March 3, 1921.

Rates on club-turned spokes, in carloads, from Goodman, Bentonla, Yazoo City, and Valley, Miss., to Memphis, Tenn., found unreasonable. Measure of maximum reasonable rates prescribed and reparation awarded.

J. V. Norman, C. A. New, and J. H. Townshend for complainant.
John F. Finerty, A. P. Humburg, Alex. M. Bull, and Clinton H. McKay for defendants.

REPORT OF THE COMMISSION.**DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.****BY DIVISION 3:**

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation, manufactures spokes and other vehicle material at Memphis, Tenn. By complaint seasonably filed, as amended, it alleges that defendants' rates on club-turned spokes, in carloads, from Goodman, Bentonla, Yazoo City, and Valley, Miss., to Memphis, were and are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded and exceed the rates contemporaneously applying on lumber. We are asked to prescribe reasonable rates for the future and to award reparation on shipments made since September 5, 1919. Rates will be stated in cents per 100 pounds, and except as otherwise noted do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Goodman is a local point on the Illinois Central; the other points are local to the Yazoo & Mississippi Valley. The shipments, which consisted of oak and hickory club-turned spokes, moved to destination over the respective lines originating the traffic. In the absence of commodity rates club-turned spokes take sixth-class rates between points in southern classification territory. The following table shows the commodity rates on lumber, including hardwood lumber, and the sixth-class rates effective June 25, 1918, from these several points to

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Memphis; also the commodity rates on club-turned spokes from and to the same points in effect during portions of that period as indicated:

To Memphis from—	Distance.	Commodity rates on lumber.	Sixth-class rates.	Commodity rates on club-turned spokes.	
				In effect since June 25, 1918.	In effect since Feb. 20, 1920.
	Miles.	Cents.	Cents.	Cents.	Cents.
Goodman	161	12.5	34	16.5	16.5
Bentonla.....	196	12.5	39	.....	16.5
Yazoo City.....	177	12	46.5	.....	16
Valley	184	12	39	.....	16

Up to the time of the hearing 35 shipments had moved. Charges on those from Goodman and Yazoo City were assessed at the applicable commodity rates, those from the latter point having moved subsequent to February 20, 1920. Some of those from Bentonla and Valley moved prior to that date and were charged the class rates, while others moved subsequent thereto and were charged the commodity rates.

Complainant shows that the contemporaneous combination rates from Bentonla, Yazoo City, and Valley were 23.5 cents, basing on Holly Springs, Miss., made up of rates of 16.5 cents to that point and 7 cents, applicable in connection with the St. Louis-San Francisco beyond, and 27.5 cents, basing on Felts, Tenn., made up of rates of 16.5 cents to that point and 11 cents back to Memphis; also that the 39-cent rate from Bentonla and Valley was higher than the rate then in effect from those points to Detroit, Mich. It further shows that lumber rates are applied on club-turned spokes by all the lines west of the Mississippi River, not only to Memphis but to other Mississippi and Ohio River crossings, to points in official classification territory, and to Canadian and other points, by some of the east-side lines to Memphis, by all the east-side lines to other Mississippi River and Ohio River crossings, to points in official territory and to Canadian and other points, and by the Illinois Central to destinations on its lines as far south as the first station north of Memphis and the first station north of Grenada, Miss., which is intermediate between Goodman and Memphis. It is testified for complainant and not disputed of record that 90 per cent of the movement of club-turned spokes in the United States is on lumber rates, and that, with the exception of the movement from the points in question, substantially the entire tonnage of this commodity to Memphis is from points from which the lumber rates are applied. Complainant also shows that practically all lines serving Memphis, including defendants and many of their connections, apply lumber rates to an extensive list

of lumber products, including, generally, box and barrel material, carpenters' molding, ceiling, flooring, heading, and wainscoting, most of which have progressed further in the manufacturing process than club-turned spokes and are ready for commercial use in the form in which shipped.

For defendants it is testified that commodity rates are not ordinarily established until they are justified by the development of a movement, and that following requests therefor they were established from these points of origin to Memphis; that lumber is a raw material rated class A, in carloads, in southern classification territory, while club-turned spokes are a partially finished product taking a higher rating, and that the relative values and volume of movement differ essentially; also that from these points to Memphis the lumber rates are mere "paper rates" and that the movement of spokes is sporadic. They refer to rates on spokes from and to a number of points in the south on a higher basis than the commodity rates assailed and to the tariffs of numerous carriers in various sections of the country which do not provide for the application of lumber rates on club-turned spokes. They also refer to rates on lumber from and to various points in the south and to various distance scales the general basis of which is higher than the lumber rates to Memphis from the points of origin under consideration. They contend that the lumber rates were intended primarily for rough lumber and that such rates to Memphis have been influenced by water competition and are on too low a basis to be applied to club-turned spokes; and that if the same rates are to be maintained on lumber and club-turned spokes, the equalization should be effected by increasing the lumber rates rather than by reducing the rates on spokes.

Defendants' claim that the lumber rates from these Mississippi points to Memphis are unduly low is challenged by complainant, which shows that they compare favorably with the lumber rates of other east-side lines to Memphis and with numerous rates on lumber in southern territory, which we have approved as maxima. It also asserts that the relatively higher rates on spokes mentioned by defendants are "paper rates."

We found that club-turned spokes were entitled to the lumber rates in *Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co.*, 27 I. C. C., 370; *Memphis Freight Bureau v. A. & V. Ry. Co.*, 45 I. C. C., 121; and *Rates on Lumber and Lumber Products*, 52 I. C. C., 598. The last-named proceeding was a general investigation respecting the rate relationship of lumber and various lumber products, but the *Memphis Freight Bureau Case*, *supra*, involved the measure of the rates on spokes as compared with the lumber rates from Delhi, La., to Memphis, and in the *Eastern Wheel Mfrs. Asso. Case*, *supra*, the 61 I. C. C.

reasonableness of the rates on spokes was considered as compared with the lumber rates from and to points south of the Ohio River and also from and to other extensive territory.

Defendants seek to distinguish between these cases and the present case, contending, among other things, that in certain of them it was shown that a large number of wood articles analogous to club-turned spokes were transported at the lumber rates and that spoke manufacturers had to compete with manufacturers of lumber and other wood articles in the purchase of stumpage. The present record discloses that there is considerable movement of hoops from Yazoo City to Memphis and that there is competition between lumber and stave mills in the purchase of stumpage in this territory.

No sufficient reasons are shown for departing from the principle laid down in the cases referred to. We find that the rates assailed were, and that the present rates are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed the carload rates contemporaneously in effect from and to the same points on lumber manufactured from the same kind of wood; that complainant made the shipments as described between September 5, 1919, and July 8, 1920, the date of the hearing, and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

An order for the future will be entered.

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No. 10807.

ILLINOIS ZINC COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI PACIFIC
RAILROAD COMPANY, ET AL.

Submitted February 17, 1921. Decided March 17, 1921.

1. Rates on (a) zinc ore, in carloads, from the Joplin, Mo., and Miami, Okla., ore districts to La Salle and Peru, Ill., on (b) spelter and sheet zinc, in carloads, from La Salle and Peru to eastern trunk line and New England territories, and (c) the aggregate rates on ore inbound to La Salle and Peru and either spelter or sheet zinc outbound to aforesaid eastern territories, not found to have been or to be unreasonable or unduly prejudicial.
2. Rates on zinc ore, in carloads, from the Platteville, Wis., ore district to La Salle and Peru, Ill., found to have been and to be unreasonable to the extent indicated in the report. Reparation awarded.

John S. Burchmore and Luther M. Walter for complainants.

H. G. Herbel, N. S. Brown, A. B. Enoch, L. H. Strasser, W. F. Dickinson, and James M. Chaney for defendants.

Frank M. Swacker for New Jersey Zinc Company, Mineral Point Zinc Company, Prime Western Spelter Company, and Tulsa Fuel & Manufacturing Company, interveners.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

CLARK, *Chairman*:

The issues here involved were made the subject of a proposed report by the examiner, and exceptions were filed by complainants.

The complainants are the Illinois Zinc Company, a corporation engaged in smelting zinc ores and manufacturing zinc products and by-products at Peru, Ill., and the Matthiessen & Hegeler Zinc Company, a corporation engaged in like business at La Salle, Ill. Their complaint, filed August 7, 1919, and thereafter amended, is in substance as follows: In the past they have received at their smelters numerous carload shipments of zinc ore from the Joplin, Mo., and Miami, Okla., districts and numerous carloads of zinc ore, including treated ore, from the Platteville, Wis., district, and have shipped to eastern trunk line and New England territories numerous carloads of slab zinc or spelter, and other zinc products, including sheet zinc.

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The inbound ore is bought and the outbound products are sold in competition with manufacturers at various named points in Illinois, Kansas, Oklahoma, and Arkansas and at points in West Virginia, Pennsylvania, and Indiana, and the products are sold in competition with rolling mills in the above-named eastern territories which receive shipments of spelter from smelters which compete with complainants. It is alleged—

1. That the ore rates from the Joplin and Miami districts to Peru and La Salle were and are unreasonable and, with relation to the ore rates charged complainants' competitors from the same points and from Colorado, unduly prejudicial, in violation of sections 1 and 3 of the act to regulate commerce;

2. That the ore rates from the Platteville district to Peru and La Salle were and are unreasonable and, with relation to the rates accorded complainants' competitors from Mineral Point, Wis., to Depue, Ill., unduly prejudicial;

3. That the spelter rates from Peru and La Salle to eastern trunk line and New England territories were and are unreasonable and, with relation to the corresponding rates from the competing western points, unduly prejudicial;

4. That the fifth-class rates maintained on sheet or rolled zinc from Peru and La Salle to the above-named eastern territories were and are unreasonable and unduly prejudicial to the extent that they have exceeded and exceed the contemporaneous sixth-class rates, and unreasonable and unduly prejudicial with relation to the corresponding rates maintained on spelter from the competing producing points to the competing eastern rolling mills;

5. That the aggregate rates to and from Peru and La Salle, as above, were and are unreasonable and, with relation to the aggregate rates to and from the competing points, unduly prejudicial.

The rates so assailed are further challenged as violative of section 10 of the federal control act. The relief sought embraces lawful rates for the future and reparation on all shipments of ore to Peru and La Salle within the statutory period preceding the complaint and thereafter to the date of our order herein.

The New Jersey Zinc Company, operating a smelter and also producing rolled zinc at Aquashicola, Pa., the Mineral Point Zinc Company, the Prime Western Spelter Company, and the Tulsa Fuel & Manufacturing Company, operating zinc smelters at Depue, Ill., Iola, Kans., and Collinsville, Okla., respectively, intervened in opposition to the complaint. Rates hereinafter stated are in cents per 100 pounds and, except as otherwise indicated, are those in effect at the time of the hearing, prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

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Peru and La Salle, approximately 100 miles west of Chicago, Ill., so closely adjoin one another as to form practically one community. Both complainants buy zinc ore in the so-called Joplin-Miami and Mineral Point-Platteville districts, the Illinois Zinc Company obtaining about 20 per cent of its requirements from Platteville and the balance from Joplin-Miami. Neither complainant buys the Colorado ore, which is lower in zinc content, the ratio being about 40 per cent to 60 per cent in the other ores, and contains objectionable impurities. At both plants the inbound shipments of ore are mixed or blended to secure uniform results, and the ensuing smelting process produces the spelter, or slab zinc, with some sulphuric acid as a by-product. Roughly, two tons of the Joplin-Miami or Mineral Point-Platteville ore produce one ton of spelter. The latter commodity in the form of slabs weighing about 50 pounds each, appears to be complainants' principal finished product, but each plant is equipped with a rolling mill in which spelter is rolled into sheets of different sizes and thicknesses, as required by the trade, and both commodities are shipped to the eastern territories. What is known as "prime western spelter" is the grade consisting of 98.5 to 99.5 per cent pure zinc, and appears to represent the standard.

The ore from Joplin-Miami is subjected at the mines to what is called a concentrating process before shipment, in which process it is crushed and washed to remove the dirt and other refuse matter. While it is shipped wet, settlement between buyer and seller is made on a dry basis, the price depending on the zinc content of the ore as determined by assays. The base or standard price is for 60 per cent ore, the price paid in each instance varying about \$1 per ton for each 1 per cent over or under the standard.

The ore from the Mineral Point-Platteville district, while about the same as the Joplin-Miami ore in zinc content, contains iron pyrites, and much or most of it is subjected to an additional process before shipment to the smelters. After the crushing and washing at the mines, it is forwarded by rail or wagon to separating plants, where it is given a light roast, which drives off some of the sulphur and magnetizes the pyrites, and the latter are then removed by magnetic separators. Such plants are maintained at Cuba City, Benton, New Diggings, Mineral Point, and Platteville, Wis. The treated ore is loaded directly into railroad cars at each plant. Apparently there is also an outbound movement of ore which has not been subjected to the separating process.

While the evidence indicates a wide variation in prices during the past few years, the average price paid by complainants in 1919 for grades ranging above and below the base or standard approximated \$45 per ton. In periods of low prices the mines producing the lower

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grades close down, resuming operations as higher prices afford a profit, and many mines in the Joplin-Miami field are idle at present. In the year 1918 there were shipped 474,745 tons from that field and 120,854 tons from the Wisconsin field, and the average car loading from each is given as approximating 40 tons. Competing smelters buy more or less in both fields. Except in times of car shortage, the loading is in box cars, the use of open cars exposing the ore to damage by an accumulation of cinders, but the ore is weatherproof and not subject to pilferage in transit.

ORE RATES FROM JOPLIN-MIAMI TO PERU AND LA SALLE.

Joplin, in southwestern Missouri, Miami, Okla., and various other points are in the Joplin-Miami ore district. Numerous of these Oklahoma and Kansas points are also embraced within the so-called Kansas gas belt. This district is served by the following roads: The St. Louis-San Francisco, hereinafter called Frisco, the Missouri Pacific, the Missouri, Kansas & Texas, the Kansas City Southern, the Missouri, Oklahoma & Gulf, the Miami Mineral Belt, the Oklahoma, Kansas & Missouri, and the Joplin & Pittsburg.

The Joplin field proper is largely exhausted and most of the ore is derived from Oklahoma, Picher being about the center of heaviest production. The greater portion of the ore from the district originates on the Miami Mineral Belt and the Oklahoma, Kansas & Missouri, the former leading.

From Joplin to Peru and La Salle the assailed rate is 19 cents, increased from 15 cents on June 25, 1918, and from points on the two short lines last mentioned it is 22 cents, increased from 17.5 cents on the same date and from 17 cents on July 20, 1917. By the application of different tests complainants endeavor to set a substantially lower rate as the maximum for application from all points in the district. The first of their witnesses upon this question, a railroad analyst and statistician, arrives at a "constructive rate" approximating 16.5 cents. The data used for the purpose are taken from or based upon the annual reports for 1918 of nine western trunk lines which participated in the transportation of zinc ore under the rates in issue, not including the Chicago & Alton, Kansas City Southern, or Frisco, the reports of which latter carriers were not available when the exhibits were compiled. Taking the stated average operated railroad mileages, revenue tons carried, revenue ton-miles, freight revenues, and loaded freight car-miles, and upon the basis of a computed average haul of 244 miles on all freight traffic by each carrier, not representing the average total haul, average load per car, etc., less an estimated carload terminal cost of \$15 for each line, an average car-mile revenue of 16.8 cents on such traffic is obtained, representing

the "1918 average equated to present rate basis." The quoted statement refers to the increased rates following general order No. 28 of the Director General of Railroads. Multiplying this factor by the indicated "average distances" of 580 miles from Joplin and 600 miles from Miami and adding a two-line terminal allowance of \$30, the respective products or theoretical revenues per car are translated into rates of 16.2 and 16.6 cents per 100 pounds, respectively, applied to the indicated average loads of 78,600 pounds of zinc ore. The estimated terminal cost is said to be based upon carrier tests made in connection with *Memphis-Southwestern Investigation*, 55 I. C. C., 515. The avowed theory of the "constructive rate" is that the ore should yield no greater revenue per loaded car-mile than the average revenue obtained from all freight traffic, which the witness regards as the "acid test" of any rate. On brief complainants disclaim its applicability to high-grade traffic, but submit it as an appropriate measure of reasonable rates on such low-grade traffic as zinc ore, weighing more per car than the average of all freight and requiring no special facilities or service.

By the second witness numerous rate comparisons are submitted, which it is unnecessary to discuss in great detail.

Referring on brief to Kansas City as a key or basing point on traffic between the territories on either side, complainants contend that the ore rates from Joplin-Miami to Peru and La Salle are improperly related to indicated rates from Kansas City. The complaint raises no question of undue prejudice or preference as between Peru or La Salle and Kansas City, but certain rate situations are contrasted as bearing upon the reasonableness of the rates assailed. It appears that ore from the Joplin-Miami district is shipped to a plant at Argentine, Kans., a suburb of Kansas City, for the manufacture of sulphuric acid, and that at least in the past the calcined ore, minus only the sulphur and concentrated to that extent, has moved to an affiliated plant at Springfield, Ill., for smelting. From Kansas City or Argentine to Springfield, 302 miles, the ore rate is 9 cents, and complainants argue that the rates in issue should be properly related thereto. It also is pointed out that the Kansas City Southern maintains a rate of 5 cents from Kansas City to Joplin, 154 miles, and that if the rate applied in the opposite direction the Kansas City combination, embracing an 11.5-cent rate from that point to Peru and La Salle, would be 16.5 cents, equal to the "constructive rate" above mentioned. It is not suggested, however, that there is or has been a movement of ore from Kansas City to Joplin, and as the rate in the reverse direction is 10 cents the total rate paid on Joplin ore treated at Argentine and reshipped to Springfield is 19 cents. The corresponding combination to Peru and La

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Salle would be 21.5 cents, 2.5 cents higher than to Springfield and 2.5 cents higher than the through rate from Joplin to Peru and La Salle.

The record would not warrant a finding that the proposed basis would be appropriate; and this is also true of a further contention that ore rates should be related to the so-called Kansas City basis in the same manner as prescribed with respect to cement in *Western Cement Rates*, 48 I. C. C., 201; 52 I. C. C., 225.

Complainants also cite the contemporaneous class-rate structure as evidence that the rates in issue are improperly related to Kansas City. By an exhibit contrasting all the class rates from Joplin, Mo., and Pittsburg, Kans., to La Salle with those from Kansas City to La Salle the former are shown to average 130 per cent of the latter. Zinc ore is rated class D in the governing western classification, and the corresponding percentage in the case of the class-D rates is 122.5, although complainants question the movement of any substantial amount of ore on class rates. Relating the commodity rates in the same way, 122.5 per cent of the 11.5-cent Kansas City-La Salle ore rate would approximate 14 cents, and 130 per cent would approximate 15 cents, Joplin to La Salle; whereas the 19-cent rate from Joplin is 165 per cent of the rate from Kansas City. Or, it is pointed out, adding to the 11.5-cent rate from Kansas City the 4.5-cent difference between the respective class-D rates would produce a rate of 16 cents from Joplin. The indicated class rates from Joplin do not apply from the Miami portion of the field, and the combination class-D rate from La Salle over Baxter Springs to Picher, as representative, is 31 cents, or 155 per cent of the Kansas City-La Salle class-D rate of 20 cents; and 155 per cent of the Kansas City-La Salle 11.5-cent ore rate would approximate 18 cents, as against the rate of 22 cents from points on the originating short lines to Peru and La Salle.

Complainants likewise challenge the 3-cent local rate, originally 2 cents, applied on ore by each of the originating short lines, with particular mention of the Miami Mineral Belt. This local, added to the 19-cent rate carried from the district by the connecting trunk lines, makes the through rate of 22 cents upon which practically all the ore moves to Peru and La Salle. Complainants point out that for 1918, as shown by the annual report to this Commission, the railway operating income of the Miami Mineral Belt was almost 50 per cent of its total investment in road and equipment; and argue that as to the great bulk of the traffic the short lines practically take the place of the extensive spurs maintained by the trunk lines to handle the ore traffic of the Joplin section and from which the rate is 19 cents. They insist that if these short lines are entitled to any "arbitrary," 3 cents is too much.

Defendants challenge the theory of the "constructive rate" as impractical and unsound, and cite *California Walnut Growers Asso. v. A. & R. R. Co.*, 50 I. C. C., 558, in which, criticizing a comparison with car-mile revenues on all freight, we observed that the higher rates paid on less-than-carload freight do not counterbalance the lighter loading, and pointed out the wide difference between the indicated car-mile revenues of two important lines included in the comparison in that case as indicative of the care that must be exercised in attempting to draw conclusions from such data. In the instant case the "constructive rate" is based upon the returns of but nine carriers, the performances of which likewise disclose material variations. Defendants also cite *Coke Producers Asso. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125, and later cases, in which we pointed out that the ultimate result of the test would be the reduction of all rates to a common level; a result, it may be emphasized, that would take little account of the infinite variety of circumstances and conditions pertaining to the different kinds of traffic handled in varying hauls between a multitude of points.

Defendants submit a number of counter rate comparisons, also unnecessary to recite.

With the exception of the 25 per cent increase on June 25, 1918, the rate from Joplin to Peru and La Salle had been increased but 1 cent during the 16 years preceding the hearing, the latter increase having been made March 25, 1915, when the rate became 15 cents. This, it is argued, is strongly indicative of the reasonableness of the rate assailed, when it is borne in mind that within the past few years operating costs have more than doubled. The record discloses that the Miami Mineral Belt Railroad and the Oklahoma, Kansas & Missouri Railway were constructed primarily to meet the transportation needs of mines from which the ore formerly had been conveyed by wagon to the nearest railroad; and at present by far the greater part of the traffic handled by those lines consists of outbound shipments of ore, necessitating a substantial inbound movement of empty cars.

As practically all the traffic now moves from that portion of the district served by the two short lines, the reasonableness of the through rate of 22 cents, considered as a unit and without regard to the amount of the factor added to the rate from Joplin proper, is the substantial issue. Little aid is afforded by the rates with which opposing comparisons are made, varying materially in ton-mile and car-mile earnings. The several cited rates outbound from Kansas City, not a producing point, upon which so much stress is laid in argument, are but portions of through rates, if ever actively used at all; and the record contains nothing to indicate that they would be appropriate measures of reasonable rates from mines to

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smelters or that the rates in issue should be in any way related thereto. Whether or not to be regarded as low-grade traffic, as characterized by complainants, the ore is handled in box cars, involving a considerable inbound empty movement of such equipment, and has a substantial value. When all is said, particularly as of the period covered by the complaint, a rate yielding a little over 8.5 mills per ton-mile and 33 cents per car-mile with a load approximating 40 tons, computed on the short-line haul of 514 miles, can not be deemed excessive; and this is likewise true of the rate from Joplin proper, on a somewhat lower basis. We find that the rates on ore from the Joplin-Miami district assailed were not, and that under existing conditions the present rates based thereon are not, unreasonable.

Complainants submit some evidence designed to show that, in their relation to the rates assailed, the rates on zinc ore maintained by such of the defendants as participate in the transportation of that commodity from certain Colorado points, of which Pueblo and Canon City are cited as representative, and from the Joplin-Miami district, to competing smelters in the gas belt and in Illinois unduly prefer those smelters, to complainants' prejudice. According to their exhibits, from Canon City, for example, to Bartlesville, Okla., 654 miles, and to Cherryvale, Kans., 623 miles, the rate on ore of declared or agreed value of \$20 per ton or less is 15.5 cents, increased from 12.25 cents on June 25, 1918; on ore of declared or agreed value of more than \$20, but not exceeding \$100, the rate is 17 cents, increased from 13.5 cents on the same date. These are contrasted with the higher rates under attack, which apply for shorter distances.

Competing smelters in the gas belt are much nearer the Joplin-Miami field than are complainants, but in the sale of their products complainants possess the advantage of closer proximity to the eastern markets. With respect to the gas belt the gravamen of the complaint seems to be that those smelters are accorded rates on their outbound spelter that are only slightly higher than complainants' rates on ore. Complainants cite rates to St. Louis of 15.5 cents on ore from Joplin, 332.5 miles, and of 17.5 cents on spelter from a gas belt point, Cherryvale, 404 miles; and point out that the price of spelter is fixed at St. Louis, Mo.

Taking 200 pounds of ore inbound and 100 pounds of spelter outbound, complainants indicate that, under the adjustment of in-and-out rates from Joplin via La Salle and Hillsboro, Ill., to New York, La Salle is at a disadvantage of 5 cents in the aggregate rates. On an equal quantity of ore inbound and spelter outbound, using the 100-pound unit on which the rates apply, the difference in the aggregate favors Hillsboro to the extent of 1.5 cents. The ship-

ments in and out of La Salle move an average distance of 1,542 miles as compared with 1,386 miles in and out of Hillsboro.

For defendants and interveners it is reiterated that the zinc content of the Colorado ore used by smelting plants in the gas belt is much lower than that obtained by complainants in the Joplin-Miami district. Zinc ore is not produced at Pueblo or Canon City, but originates at points from which to Pueblo, for example, the distances range from 38 to 373 miles, and the rates from most of the producing points to Pueblo equal or exceed the rates from that point to the gas belt. As far as they go, the exhibits indicate some advantage, rather than disadvantage, to complainants in aggregate transportation costs per ton of zinc metal to New York as between Colorado ore smelted at Depue and gas belt points, Joplin-Miami ore smelted at gas-belt points, and Joplin-Miami ore smelted at Peru and La Salle.

The adjustment of rates on ore from the Joplin-Miami district complained of is not shown to have been or to be unduly prejudicial to complainants.

ORE RATES FROM PLATTEVILLE-MINERAL POINT TO PERU AND LA SALLE.

Platteville is in southwestern Wisconsin and is served by branches of the Chicago & North Western Railway, hereinafter called the North Western, and the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee. Platteville, Mineral Point, and numerous other points, some of them served by the Mineral Point & Northern Railroad, are within the Platteville-Mineral Point district.

From Platteville to Peru and La Salle the rate on ore is 10.5 cents, increased from 8.5 cents on June 25, 1918. This rate also applies from other points in the district, but the bulk of the ore moves from points on the North Western. Complainants compare this rate with various other rates, including a rate of 2.5 cents on zinc ore from points in the Platteville district to Galena, Ill., applicable on ore to be treated at Galena and reshipped over the North Western, and a rate of 5 cents from Galena to La Salle, restricted to apply on treated ore; and contend "that a 2.5-cent rate into Galena and a 5-cent rate out, both voluntarily established by the defendants, although restricted to traffic that is given free transit service at Galena, meaning therefore a greater aggregate service for the defendants, strongly emphasizes the unreasonableness of the higher through rate." The local rate from points in the Platteville district to Galena was 4 cents. Counter rate comparisons are presented by defendants.

During the period of federal control zinc-ore shipments were routed through Galena in connection with the Burlington or Illinois Central. The distances via those routes are 136 and 145 miles, respectively.

spectively, from Benton, cited as the center of the group. Preceding that period the North Western received substantially the entire haul on traffic originating on its line, and defendants insist that that carrier will not consent to a short haul under private control. The current tariff, however, makes provision for routing via Galena and the Illinois Central under the 10.5-cent rate, and complainants insist that this is the natural and reasonable route for shipments of ore to Peru and La Salle and should be used in determining the reasonableness of that rate. The "constructive rate" proposed for application over the short route is 6.8 cents. The average distance over the circuitous routes composed of the North Western to Dixon or Spring Valley, Ill., and the Illinois Central or Rock Island beyond is 250 miles, and defendants contend that the traffic normally so moves. Ore from points on the Milwaukee, and from points on the Mineral Point & Northern in connection with the Milwaukee, to Peru and La Salle, apparently requires somewhat longer hauls, the indicated average being 257 miles. By the two long routes, North Western and Milwaukee, the 10.5-cent rate yields 8.4 and 8.2 mills per ton-mile, respectively; via Galena and the Illinois Central it yields 14.5 mills. The circuitous routes of the North Western so far exceed in length the route through Galena as to justify prescribing a rate commensurate with the service over the short route.

Treated zinc ore constitutes the bulk of complainants' shipments from the Platteville-Mineral Point district. Complainants also receive some green or untreated ore, the amount of which is not shown. One of their exhibits indicates that out of 120,854 tons of ore, including treated ore, from that district in 1918 to various smelters complainant Illinois Zinc Company received 8,846 tons, Matthiessen & Hegeler Zinc Company 7,040 tons, and the intervening Mineral Point Zinc Company 7,255 tons. In addition, the latter company received at Depue, from its own treating plant at Mineral Point, about 477 cars of ore. On the basis of 40 tons per car, this would amount to 19,080 tons. Complainants argue that, because of the difference in rates from this district, they have been unable to draw their full share of the ore.

A 5-cent rate applies from Mineral Point to Howe-Depue on treated ore which moves into Mineral Point from various mines in the district for an average distance of about 45 miles at an average rate of 5.4 cents; and complainants' competitor at Depue, the proprietor of the only ore-treating plant at Mineral Point, pays in the aggregate 10.4 cents on its inbound ore shipments for an average aggregate short-line distance of 232 miles. The treating process, however, reduces green ore to approximately one-half its original volume. Interveners submit an exhibit indicating that on the basis

of two tons of green ore inbound to Mineral Point and one ton of treated ore outbound to Depue the total freight charges borne by the Depue smelter are substantially in excess of corresponding aggregate charges on green ore to Cuba City, Wis., and treated ore thence to Peru or La Salle. This showing is not comprehensive, as most of the ore purchased by complainants first moves from the mines to treating plants at rates ranging from 2.5 cents upward, and the contrary is not shown with respect to aggregate rates from any points in the district. In any event, it appears that complainant Matthiessen & Hegeler Zinc Company buys its ore f. o. b. points of treatment and pays only the rate of 10.5 cents. The 10.5-cent rate from the grouped ore-treating points of the district to Peru and La Salle and the 5-cent rate from Mineral Point to Howe are not aligned in accordance with the respective transportation services thereunder.

We find that the rates on ore from Wisconsin points assailed were not, and that under existing conditions the present rates are not, unduly prejudicial, and that they are not unreasonable except from Platteville, Wis., and points taking the same rates, to Peru and La Salle, Ill., over the routes of the North Western to Galena and either the Burlington or the Illinois Central beyond. We find that the said rates via those two routes were, are, and for the future will be, unreasonable to the extent that they exceeded or exceed 7.5 cents per 100 pounds, subject, from and after August 26, 1920, to the increases authorized in *Increased Rates, 1920, supra*; that complainant, Matthiessen & Hegeler Zinc Company, made shipments from Platteville, Wis., and points taking the same rates, to Peru and La Salle, Ill., over the routes described, and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid on shipments moving from said points and via said routes exceeded those which would have accrued on the bases herein found reasonable; and that it is entitled to reparation, with interest. Complainant Illinois Zinc Company is also entitled to reparation on any shipments which it may have made from and to the points and over the routes in question on which it paid and bore the charges at rates herein found unreasonable. The exact amount of reparation due can not be determined on this record, and complainants should comply with rule V of the Rules of Practice. The Illinois Zinc Company in complying with this rule may submit an affidavit to the effect that it paid and bore the freight charges. Provided, however, that if defendants object to the receipt of such an affidavit complainant may request further hearing regarding the subject matter thereof.

SPELTER FROM LA SALLE AND PERU TO EASTERN TERRITORIES.

Prior to June 25, 1918, the rate on spelter to New York, as a representative point, was 19.5 cents from Peru and La Salle. On that date it was increased to 33 cents, or about 69 per cent, yielding about 6.5 mills per ton-mile. Substantially the same percentage increase was made in the spelter rates from other Illinois smelters, except Springfield. From the latter point the rate has since been increased to 35 cents. The contention is made that the rate on spelter from La Salle and Peru established on June 25 reflects an increase largely in excess of that prescribed in general order No. 28 of the Director General, and is therefore unauthorized. It is urged that these rates should not have been increased to a greater extent than 25 per cent. Attention is called to rates on spelter from Clarksburg, W. Va., to New York, N. Y., and Boston, Mass., which were increased only 25 per cent on June 25. Defendants assert that from Clarksburg rates generally are made 60 per cent of the basic Chicago-New York rates, and that the observance of that adjustment would have resulted in an increase of more than 25 per cent in the spelter rates from these points. Complainants also cite a rate of 22 cents on spelter from Chicago to New York on traffic originating at points west of Lake Michigan or the Mississippi River from which no through rates are in effect, and also on ore originating west of the Mississippi River or Lake Michigan and refined in transit at Chicago, and it is shown that this rate does not represent an increase corresponding to that made on complainants' rate. Defendants answer that this rate was maintained through error and that the rate should have been 30 cents. Following the hearing the 22-cent rate was increased to 30 cents.

In *Anaconda Copper Mining Co. v. Director General*, 57 I. C. C., 723, involving rates on spelter, *inter alia*, we said:

The federal control act provides that during the period of federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices "by filing the same with the Interstate Commerce Commission." No order for the filing of rates as a condition precedent to the lawful initiation thereof is required by the act. The rates attacked as unlawful by reason of the alleged failure to observe the terms of General Order No. 28 were filed with us by the President through his duly appointed agent, and a failure to adhere strictly to the terms of a preliminary order of the Director General, which is not required by the act, and in the absence of which complainants' contentions would be without foundation, can not be construed as defeating the validity of the rates concerned.

Spelter is rated sixth class in the governing official classification, and complainants show that while the rate on spelter to New York prior to June 25, 1918, was 59 per cent of the contemporaneous sixth-

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class rate, the rate assailed is about 80 per cent of the sixth-class rate established on that date. The "constructive rate" proposed for spelter is 25.5 cents from La Salle and Peru to New York. In computing this rate the annual reports for 1917 of 16 eastern and New England trunk lines which participate in the transportation of spelter are used.

Complainants aver that their dissatisfaction with the spelter rates rests wholly upon what they call the extreme and unauthorized increase on June 25, 1918, and the discriminatory situation produced by the relative adjustment of inbound ore rates and outbound spelter rates. Incidentally, the relief sought in this connection and the further relief sought by way of reduction of the eastbound rates on sheet zinc would successively affect, in some undisclosed degree, the alleged prejudicial adjustment of eastbound spelter and sheet-zinc rates, presently to be considered, and the adjustment of rates on those commodities themselves, as well as with relation to one another, from the different producing points.

With a necessary correction in one of complainants' comparisons, using Joplin as the ore-originating point, on the basis of two tons of ore inbound and one of spelter outbound to New York the total freight charges to and from La Salle and Peru would be \$1.70 in excess of the total charges to and from Caney, Kans., a point in the gas belt. For interveners it is testified that the gas belt smelters generally obtain from the Joplin district ore of a lower zinc content than that used by the complainants, and they argue that the ratio of two tons of ore inbound to one of spelter outbound is not an accurate basis of comparison. They introduce exhibits indicating that the average zinc content of complainants' ore is 62 per cent, while that used by representative gas belt smelters is from 41 to 59 per cent. Making allowance for this difference, the total freight costs, based on the metallic content of the ores, are shown to be higher for the gas belt points on their inbound and outbound shipments than corresponding costs borne by complainants. Similar showing is made with respect to the inbound ore rates from Colorado points to the gas belt and Depue and outbound rates on spelter to New York. Viewed from the standpoint of the unit of quantity on which the rates are applied, with reference again to Joplin ore, it appears that the aggregate in-and-out rate which La Salle and Peru smelters pay is 52 cents, as compared with 57.5 cents for Caney, the point named in complainants' example. Exhibits of record afford a substantially similar showing as to other points with smelters with which complainants come in competition.

Defendants insist that the rate on spelter in effect prior to June 25, 1918, was abnormally low and was established and maintained as

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a result of an arrangement which they were unable to overcome until the issuance of general order No. 28. In the percentage adjustment of eastbound rates Peru and La Salle take rates to New York that are 110 per cent of the Chicago-New York rates, and this is the basis of the assailed rate on spelter from and to these points. With this fact in view, defendants undertake to show that that rate is reasonable by comparing the Chicago-New York rate of 30 cents on the same commodity with rates and car-mile earnings on other commodities moving from and to the same points.

The rates on spelter assailed were not, and under existing conditions the present rates are not, unreasonable; and the adjustment complained of is not found to have been or to be unduly prejudicial to complainants.

SHEET ZINC FROM LA SALLE AND PERU TO EASTERN TERRITORIES.

The spelter or slab zinc produced by complainants is used by them to a large extent in the manufacture of sheet zinc, which they sell principally in territory east of Buffalo, N. Y., and Pittsburgh, Pa., including New England. In the manufacture of sheet zinc complainants come in competition with zinc-rolling plants located chiefly in the east, including Palmerton and Aquashicola, Pa., Wheeling, W. Va., South Hampton and Plymouth, Mass., and Waterbury, Conn. Competing zinc-rolling plants are also located at Greencastle and Muncie, Ind. These rolling plants obtain much of their spelter from western smelters with which complainants compete in the production of that commodity, and complainants urge that in consequence they are vitally interested in the relationship of the rates to eastern points as between sheet zinc and spelter.

The price of sheet or rolled zinc ordinarily exceeds the price of spelter or pig zinc by about 20 to 25 per cent, which amounts to from 2 to 2.5 cents per pound. At the time of the hearing the price of spelter was \$8 per 100 pounds and that of sheet zinc was \$9.66.

Sheet zinc is usually shipped rolled, in sheet-iron casks, weighing approximately 600 pounds, but is also shipped flat, in boxes, the weight of which does not appear. There are no commodity rates on sheet zinc from La Salle and Peru to points in eastern trunk line and New England territories. Sheet zinc is rated fifth class in the official classification, and the fifth-class rate from La Salle and Peru to New York, approximately 1,018 miles, is 49.5 cents, increased from 39.5 cents on June 25, 1918. The 49.5-cent rate yields ton-mile earnings of 9.7 mills. In comparison, complainants cite the sixth-class rate of 41.5 cents, increased from 33 cents on June 25, 1918, from and to the same points. They also submit a "constructive rate" of 34.5 cents.

Rates on spelter from competing smelters in Illinois and the gas belt to New York are contrasted with the fifth-class rate from Peru and La Salle to the same point. The cited spelter rates range from 30 cents from Danville, Ill., to 52.5 and 53.5 cents from points, respectively, in the Kansas and Oklahoma sections of the gas belt to New York. Prior to June 25, 1918, the rate to New York on spelter from Depue, Springfield, Hillsboro, Collinsville, and East St. Louis, Ill., all competing smelter points, was 19.5 cents, and the fifth-class rate from Peru and La Salle was 39.5 cents, with a spread of 20 cents between them. On the last-named date the spelter rates became 33 cents from Depue and 35 cents from the other points, while the fifth-class rate applicable on sheet zinc from Peru and La Salle became 49.5 cents, materially reducing the spreads.

Defendants point out that there are a number of sheet metals, such as lead, iron or steel terneplate, and tin plate, rated fifth class, which are lower in value than sheet zinc, and that iron or steel sheet generally moves at fifth-class rates. It is urged that sheet zinc should not be rated lower than fifth class.

Concerning the so-called "constructive rates" offered by complainants, and the theory that the traffic in question should yield no greater revenue per loaded car-mile than the average from all freight traffic, it is to be observed that the theory has in this case been applied successively to ore from the mines, to spelter from the smelters, and to sheet zinc from the rolling mills. We have discussed complainants' contentions as to the aggregates of inbound rates on raw products and outbound rates on manufactured products, but we are not to be understood as accepting the theory that such aggregates, including as they must considerations of quality and prices of raw and finished products, form a criterion from which to measure the reasonableness or the prejudicial character of rates.

We find that the rates on sheet zinc assailed were not and are not unreasonable, and that the adjustment complained of is not and has not been unduly prejudicial to complainants.

An appropriate order will be entered.

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No. 11234.

RED STAR YEAST & PRODUCTS COMPANY, IN BEHALF
OF THE MILWAUKEE VINEGAR COMPANY,

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.

Submitted August 12, 1920. Decided March 1, 1921.

Charges applicable on imported blackstrap molasses in tank-car loads from Mobile, Ala., to Cudahy, Wis., found not to have been unreasonable or otherwise unlawful. Complaint dismissed.

S. J. Bolton for complainant.

Beach L. Walker, Charles J. Rixey, jr., and John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation, manufactures vinegar at Cudahy, Wis., under the trade name of Milwaukee Vinegar Company. By complaint filed February 12, 1920, as amended, it alleges that the charges collected by defendants on 21 tank-car loads of imported blackstrap molasses shipped from Mobile, Ala., to Cudahy between July 9, 1919, and February 2, 1920, both inclusive, were unjust, unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section. The prayer is for reparation. Rates will be stated in cents per 100 pounds. Unless otherwise noted import rates mentioned herein are restricted to blackstrap molasses of value not exceeding 8 cents per gallon.

Cudahy is a local station on the Chicago & North Western, 7 miles south of Milwaukee, Wis. The shipments were originally consigned to Milwaukee and were reconsigned from that place to Cudahy. Charges were collected at a combination rate consisting of the import rate of 29 cents to Milwaukee and a distance rate of 5 cents thence to Cudahy. In addition a reconsignment charge of \$2 per car was collected on 15 of the shipments. The rate applicable was a combination of the 29-cent rate to Milwaukee and the class-C rate of 4.5

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cents beyond, plus the applicable reconsigning charges. Any outstanding overcharges should be promptly refunded.

The import rate contemporaneously applicable from Mobile to Cudahy was 39 cents. Maintenance of that rate to the intermediate point and of the 29-cent rate to Milwaukee was in disregard of the long-and-short-haul provision of the fourth section. Defendants' tariff naming the Milwaukee rate provided, in accordance with rule 77 of Tariff Circular 18-A, that upon reasonable request therefor rates would be established to intermediate points not exceeding those to more distant points, on one day's notice. Such request was made by complainant on several occasions prior to the time the shipments moved, but was not complied with. This failure was in direct violation of defendants' tariff provision, and complainant might have become entitled to reparation to the basis of the 29-cent rate if the shipments had been consigned to Cudahy. As they were billed and moved to Milwaukee the failure of defendants to comply with this tariff provision does not afford a basis for an award of reparation.

Complainant does not challenge the reasonableness of the rate to Milwaukee or of the class rate thence to Cudahy, but contends that a reasonable charge for the movement from Milwaukee to Cudahy would not have exceeded lower switching charges contemporaneously applicable on other and related commodities. There is ordinarily no movement of blackstrap molasses from Milwaukee to Cudahy.

We find that the charges applicable to complainant's shipments were not unreasonable or otherwise unlawful. The complaint will be dismissed.

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No. 11291.

J. B. TAYLOR

v.

DIRECTOR GENERAL, AS AGENT, GREAT NORTHERN
RAILWAY COMPANY, ET AL.

Submitted December 18, 1920. Decided March 3, 1921.

Rate charged on sheep, in carloads, from Cascade, Mont., to Chicago, Ill., stopped in transit for grazing at Stone Lake, Wis., found not unreasonable or otherwise unlawful. Complaint dismissed.

J. W. Goodman for complainant.

A. H. Lossow and *John F. Finerty* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. Upon consideration of the record we have reached conclusions differing from those suggested by him.

Complainant is engaged in the raising and marketing of live stock in the vicinity of Cascade, Mont. By complaint filed February 28, 1920, he alleges that the combination rate of \$1.195 per 100 pounds charged on certain carloads of sheep shipped July 5 and 6, 1919, from Cascade to Chicago, Ill., and stopped in transit for grazing at Stone Lake, Wis., was unjust, unreasonable, unjustly discriminatory, and unduly prejudicial, to the extent that it exceeded the rate of 85.5 cents subsequently established. We are asked to award reparation to this basis. Rates will be stated in cents per 100 pounds.

The shipments aggregated 792,000 pounds and moved in 36 double-deck cars as routed by complainant over the Great Northern to Superior, Wis., thence over the Minneapolis, St. Paul & Sault Ste. Marie, hereinafter referred to as the Soo line, to Stone Lake. Charges were assessed and collected on the basis of the applicable rate of 78.5 cents to Stone Lake. Subsequently, during the period from September 16 to 22, 1919, 28 carloads of these sheep weighing 496,000 pounds moved from Stone Lake to Chicago over the Soo line, on which the applicable rate of 41 cents was charged and collected.

Cascade is a local station on the Great Northern 30 miles south of Great Falls, Mont., on what is known as the "Great Falls-Butte 61 I. C. C.

line." Stone Lake is a local station on the Soo line 389 miles from Chicago. The average distance from Cascade to Chicago via St. Paul, Minn., is 1,509 miles as against 1,542 miles over the Superior and Soo line route of movement.

When the shipments moved the joint rate from Cascade to Chicago, both via St. Paul and over the route of movement, was 78.5 cents. In connection with this rate grazing in transit was permitted at certain points on shipments moving via St. Paul at an additional charge of 7 cents per 100 pounds. This rate was erroneously quoted to complainant by defendants' agent at Cascade as applicable over the route of movement, but defendants' tariff did not at that time permit grazing in transit at Stone Lake. By supplement to the tariff, published to become effective September 16, 1919, and to expire June 1, 1920, the application of the grazing-in-transit arrangement at Stone Lake was authorized on eastbound sheep when moving over the Great Northern to Superior and the Soo line beyond, at the joint rate plus a transit charge of 7 cents per 100 pounds. The record shows that this rate was published to aid the stock growers in the drought-stricken areas of the west in order to conserve as much as possible the stock industry of Montana and other western states.

Complainant testified that had he known the correct rate he might have inquired further and found other grazing territories where the rate of 85.5 cents would have been applicable. He relies upon the misquotation of the rate as a basis for reparation, and also on the fact that the rate sought was in effect over other routes and was subsequently established over the route of movement.

Based on the minimum weight of 22,000 pounds, which does not appear to have been exceeded by any of the shipments, the combination rate charged yielded car-mile earnings of 17 cents. Defendants contend that this shows the rate to have been unreasonably low as compared with the rates on their average traffic. The rate sought would yield car-mile earnings of 19.2 cents.

It is well settled that the misquotation of a rate by a carrier does not of itself afford a basis for an award of reparation. The record does not justify a conclusion that the rates charged were intrinsically unreasonable. What complainant is in effect seeking is the retroactive application of the transit service. We have repeatedly refused to give a retroactive effect to a transit arrangement except to remove unlawful discrimination. Complainant has not shown unjust discrimination or undue prejudice. We find that the rates assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 11473.

ATLANTIC ICE & COAL CORPORATION

v.

SOUTHERN RAILWAY COMPANY, DIRECTOR GENERAL,
AS AGENT, ET AL.

Submitted November 3, 1920. Decided March 1, 1921.

Rate on ice, in carloads, from Jacksonville, Fla., to Atlanta, Ga., found not unreasonable. Complaint dismissed.

Wm. A. Wimbish and *W. N. McGehee* for complainant.

Chas. J. Rixey, jr., and *D. Lynch Younger* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by the defendants to the report proposed by the examiner. Upon consideration of the record we have reached conclusions other than those suggested by him.

Complainant, a corporation manufacturing ice at Jacksonville, Fla., by complaint seasonably filed, alleges that the rate of \$4.30 per net ton charged on 16 carloads of ice shipped during July and August, 1919, from Jacksonville to Atlanta, Ga., was unjust and unreasonable to the extent that it exceeded \$3 per net ton. Reparation is sought. Rates are stated in amounts per net ton, unless otherwise indicated, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments moved from Jacksonville to Atlanta over the Georgia Southern & Florida to Macon, Ga., and Southern beyond, 349 miles. Charges were collected at the applicable commodity rate of \$4.30. This applied over 21 available routes for an average distance of 402 miles. The aggregate weight of the shipments was 459.15 tons, and the average weight per car 57,393 pounds, or 28.7 tons. Using the average weight and actual mileage, the rate assessed yielded a revenue of 12.3 mills per ton-mile and 35 cents per car-mile. A rate of \$3 would yield 8.6 mills per ton-mile and 24.4 cents per car-mile. For the average mileage the ton-mile earnings under the rate applied were 10.7 mills and under the rate sought would be 7 mills.

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Such a \$3 rate was applicable in the opposite direction. On August 25, 1919, after these shipments had moved, defendants established a \$3 rate at complainant's request in order to meet an ice shortage at Atlanta. Under normal conditions no ice moves to that point from Jacksonville, and on February 29, 1920, the \$4.30 commodity rate was reestablished. There is no record of any shipment since 1912 of ice in carloads from Jacksonville to Atlanta except the 16 carloads on which reparation is sought, and no traffic need for reinstatement of the \$3 rate, subject to the increases authorized in *Increased Rates, 1920, supra*, is made to appear.

Complainant shows by way of comparison a rate of 19 cents per 100 pounds from Atlanta to Cincinnati, Ohio, 490 miles, and to other Ohio River crossings, which was also established to meet emergency situations. Defendants compare the rates attacked with rates from and to other points for distances equal to and less than the average distance from Jacksonville to Atlanta, 402 miles, which are higher than the rates assailed, but their witness had no knowledge of shipments having been made under these rates.

In *Atlantic Ice & Coal Corp. v. O., N. O. & T. P. Ry. Co.*, 41 I. C. C., 409, on shipments of ice made in July, 1913, from Chattanooga, Tenn., to Cincinnati, 336 miles, at a class-A rate of 20 cents per 100 pounds, we awarded reparation to the basis of a subsequently established commodity rate of 12.5 cents per 100 pounds. The rate charged yielded 11.9 mills per ton-mile, and the 12.5-cent rate 7.4 mills. The increase in cost of operation between 1913 and 1919 and the resultant necessity for increase in rates are matters of common knowledge.

We find that the rate assailed was not unreasonable or otherwise unlawful. An order will be entered dismissing the complaint.

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No. 11397.¹

J. G. McDONALD CHOCOLATE COMPANY

v.

CENTRAL OF GEORGIA RAILWAY COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted November 15, 1920. Decided March 3, 1921.

Rates on cocoa butter, in carloads, from New York and Brooklyn, N. Y., and Philadelphia, Pa., to Salt Lake City, Utah, found unreasonable. Reasonable maximum basis of rates prescribed and reparation awarded.

H. W. Prickett for complainant.

John F. Finerty, J. T. Hammond, jr., H. A. Scandrett, George H. Smith, John V. Lyle, and J. M. Souby for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

The complainant, a corporation, manufactures cocoa, chocolate coating, and confectionery at Salt Lake City, Utah. By complaint in No. 11397, filed April 14, 1920, it alleges that the rates charged on seven carloads of cocoa butter shipped during the period from December 16, 1917, to December 30, 1919, from New York and Brooklyn, N. Y., to Salt Lake City were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the rates contemporaneously applicable upon cocoa, chocolate, and chocolate coating. Violations of sections 4 and 6 of the interstate commerce act are also alleged.

By complaint in No. 10857, filed August 26, 1919, complainant alleges that the charges collected upon a carload of cocoa butter from Philadelphia, Pa., to Salt Lake City, which moved June 19, 1917, were unjust and unreasonable to the extent that the charges assessed thereon from St. Louis, Mo., exceeded those based upon the third-class rate from that point to destination. The factor of the combination to St. Louis was not assailed. A hearing was had upon this complaint January 3, 1920, at which time complainant

¹ This report also embraces No. 10857, Same v. Director General, Pennsylvania Railroad Company, et al.

stated that the complaint was not broad enough to cover the issue intended to be raised, and requested postponement until a hearing could be had upon a subsequent complaint involving other shipments from Atlantic seaboard points to Salt Lake City which was to be filed and in which the issues would be properly stated. Defendants acquiesced in this request. The subsequent complaint referred to is No. 11397. Both cases were then set for hearing on the same date. No. 11397 was heard first. Evidence was introduced by complainant to show that the rate from Philadelphia, as well as the rates from New York City and Brooklyn, to Salt Lake City was unreasonable, unjustly discriminatory, and unduly prejudicial. While the statement made for the record in No. 10857 at the first hearing is not in exact terms a motion to amend this complaint, such was the unmistakable intention, and it was apparently so understood by the parties at the time, and will be so considered.

We are asked to prescribe reasonable rates for the future and to award reparation. Rates will be stated in amounts per 100 pounds. Where present rates are mentioned they do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Cocoa butter is obtained by pressing the oil from the cocoa bean after it has been roasted and hulled. The oil hardens into cake form of about the consistency of toilet soap, and as shipped to complainant was packed either in bales or cases.

Three of the shipments from New York moved by boat to south Atlantic ports, thence by rail to destination, and two moved all rail. The two shipments from Brooklyn and the one under No. 10857 from Philadelphia moved over all-rail routes.

There were no through commodity rates in effect on cocoa butter, and the rates assessed were various combinations, which, on six of the shipments from New York and Brooklyn, made a total rate of \$3.04 and on one \$2.89. From Philadelphia charges were collected at the third-class rate of 59.4 cents to St. Louis, Mo., and the first-class rate of \$2.47 beyond.

In support of the charge that the fourth section was violated, complainant cited rates applying on "grease, n. o. s." from New York to Winnemucca, Nev., 395 miles west of Salt Lake City. The western classification, to which the shipments were subject, shows cocoa butter and cocoa grease as the same commodity. The commodity rate referred to appears in the tariff under the caption "Packing-house Products," and clearly applies to packing-house or animal grease and not to cocoa grease.

The alleged violation of the sixth section was based on certain rates applying on stearine. Complainant offered the testimony of an expert chemist to prove that cocoa butter is stearine in the traffic

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and commercial sense. It seems clear from the evidence that the stearine rates cited are for application solely to a packing-house product made from animal fats.

When the ocean-and-rail shipments moved carload commodity rates were in effect from New York and Brooklyn to Salt Lake City, ocean and rail, applying on cocoa beans, chocolate, chocolate coating, cocoa, and cocoa shells, minimum 30,000 pounds. This commodity rate in 1917 was \$1.48, increased June 25, 1918, to \$1.85, and on August 10, 1918, to \$2, the present rate. A commodity rate all rail was likewise applicable from Philadelphia, New York, and Brooklyn on the commodities mentioned. When the Philadelphia shipment moved that rate was \$1.56. It was increased, effective on March 15, 1918, to \$1.60, and on June 25, 1918, to \$2, the present rate. From New York there was and is a straight commodity rate, ocean and rail, minimum 40,000 pounds, applicable on cocoa beans, which was \$1.02 in 1917, increased June 25, 1918, to \$1.275, and on August 10, 1918, to \$1.375, the present rate.

Complainant shows that eastbound from California terminals carload and less-than-carload commodity rates to New York, Chicago, and Missouri River points have been published which include cocoa butter at the same rates as cocoa, chocolate, chocolate coating, and coconut butter. In 1910 this carload rate to New York was 75 cents, minimum 30,000 pounds. It has since been canceled; but the less-than-carload rate still in effect is \$1.875. Under the intermediate application provided by the tariff this rate and the other carload and less-than-carload rates to Chicago and Missouri River points are applicable from Nevada and Utah points. The carload rate to Chicago and Mississippi River points is 94 cents, and the less-than-carload rate the same as to New York, viz, \$1.875. Reference is also made to an any-quantity rate on cocoa butter of \$1.90, in effect between October 10, 1910, and November 25, 1914, to California terminals from transcontinental groups A to F. Complainant likewise cites a \$1.14 carload rate, minimum 30,000 pounds, applicable on vegetable and other oils, including coconut oil in cans, boxed or in bulk in barrels, in effect when the first shipment moved and which has been successively increased to \$1.425 and \$1.565.

Finally, it is stated that the rates from California points to Utah are the same on cocoa butter as on chocolate, cocoa, and chocolate coating. The same is said of the local rates from Salt Lake City to points in the northwest.

Defendants show that originally the rating on cocoa butter was first class in western classification and that effective April 1, 1918, this was reduced to third class, carload minimum 24,000 pounds. The \$1.90 rate from transcontinental group territories A to F, in-

clusive, to California points is explained as having been established effective July 11, 1904, in line with the rates on drugs under which cocoa butter was shipped, it being used in the manufacture of cosmetics. Prior to that time the rate had been \$3, any quantity. The carload rates from California terminals to New York City, Chicago, and Mississippi River points are said to have been influenced by water competition via the Panama Canal. It is pointed out that the Pacific coast is not producing enough cocoa butter for its own needs, there having been recent carload shipments from New York or Philadelphia to the Pacific coast. Because of this fact there does not appear to be any necessity for rates eastbound, and it was stated that recommendation for the cancellation of these rates would shortly be made.

Defendants contend that chocolate in its various forms is a commodity which has been used universally in large quantities throughout the United States for domestic as well as for manufacturing use, and that the volume has justified the carriers in establishing commodity rates. During the three-year period from 1917 to 1919, 62 carloads of chocolate weighing 2,600,000 pounds were received at Salt Lake City, as against eight carloads of cocoa butter weighing 257,000 pounds. Commodity rates have not been accorded cocoa butter because of this disparity in the volume of movement, it is said.

We find that the rates assailed were, are, and for the future will be unreasonable to the extent that they exceeded or exceed the rates contemporaneously applicable on chocolate and chocolate coating, in carloads; that complainant paid and bore the charges on the shipments as described; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

An order for the future will be entered.

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No. 8757.

UNITED STATES GYPSUM COMPANY

v.

CULVER & PORT CLINTON RAILROAD COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted November 8, 1920. Decided March 3, 1921.

Cancellation by the trunk line carrier of the allowance formerly paid to complainant or its plant facility, the Culver & Port Clinton Railroad, found not to have subjected complainant to the payment of unreasonable, unjustly discriminatory, or unduly prejudicial rates. Complaint dismissed.

Lester L. Falk, L. K. Neeves, and Scott, Bancroft, Martin & Stephens for complainant.

John F. Finerty and D. P. Connell for defendants.

Ernest S. Ballard for New York Central Railroad Company.

James J. Walsh for Culver & Port Clinton Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

The complainant corporation operates a plant for the manufacture of gypsum products at Culver, Ohio. By complaint filed March 27, 1916, as amended, it alleges that effective April 1, 1914, following our original report in the *Industrial Railways Case*, 29 I. C. C., 212, the defendant carriers canceled the rates theretofore applying from its plant; that thereafter it was compelled to pay the charges of the Culver & Port Clinton Railroad, hereinafter called the Culver, to Gypsum, Ohio, in addition to the rates beyond that point; and that it has thereby been subjected to the payment of unreasonable, unjustly discriminatory, and unduly prejudicial rates. Reparation is asked on all shipments moving since April 1, 1914.

A hearing was had on July 12, 1916, but upon request of counsel further action in the case was postponed until we should determine the status of the Culver, a question then pending in the *Second Industrial Railways Case*, No. 4181. By order dated October 7, 1918, the Director General of Railroads was added as a party defendant. A further hearing was had on January 16, 1919.

In our report in No. 4181, entitled *Culver & Port Clinton R. R. Co.*, 58 I. C. C., 402, decided August 2, 1920, we found that road not

to be a common carrier subject to the interstate commerce act, and in considering the case now before us it will be treated as a plant facility of complainant.

So much of the evidence in No. 4181 as concerns the Culver was introduced by complainant as an exhibit in the instant case.

Complainant acquired its plant at Culver by lease or purchase in 1902. At that time it was served by tracks extending from the mill to a connection with the Lake Shore & Michigan Southern Railway, hereinafter called the Lake Shore, at Gypsum, a distance of about a mile. These tracks were originally built by the Lake Shore, which, prior to the acquisition of the plant by complainant, performed the switching apparently without any charge in addition to the Gypsum rates. It appears that after complainant acquired the plant an arrangement was entered into with the Lake Shore under which complainant was to perform the switching and receive therefor an allowance of 10 cents per ton on all outbound shipments. The tracks were leased to complainant at a rental of \$360 a year, were to be maintained by complainant, and if returned to the carrier were to be returned in the same condition as when received.

In 1905 the Culver was incorporated, as described in *Culver & Port Clinton R. R. Co., supra*. It took over the operation of the tracks serving complainant's mill, and thereafter received the 10 cents per ton on outbound traffic previously paid to complainant. Effective April 1, 1914, following our decision in the first *Industrial Railways Case, supra*, this payment was discontinued, and from that time until May 20, 1916, complainant paid to the Culver a rate of 10 cents per ton on all shipments from Culver to Gypsum, shipments in the reverse direction being hauled free. Effective on the last-mentioned date, the New York Central, successor of the Lake Shore, published a terminal allowance to the Culver of \$1.75 per loaded car on all carload revenue shipments. Following the publication of this allowance complainant apparently paid to the Culver 10 cents per ton less the amount of the allowance, although the record is not entirely clear on this point. Effective October 1, 1916, the Culver published a local rate on all carload revenue shipments between Culver and Gypsum of \$2.23 per loaded car, and a proportional rate between the same points applicable on traffic to and from points on or reached by the New York Central or connections of 48 cents per loaded car, this being the difference between the local rate of \$2.23 and the allowance of \$1.75 paid by the New York Central. This tariff still appears in our files as effective, without amendment.

While contending that the application of the Culver's charge in addition to the line-haul rates was unreasonable, complainant relies principally upon the charge of undue prejudice based on the fact

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that for two of its competitors located at Gypsum the New York Central performs the necessary switching and spotting without charge. These competitors are the American Cement & Plaster Company and the American Gypsum Company, the plants of which are located about 1,500 feet north, and a short distance south, respectively, of the New York Central's right of way. The plants are served by a series of private tracks connecting with the tracks of the New York Central, and that carrier has always performed the switching and spotting for both industries without a charge additional to the line-haul rates. The service which the New York Central performs at these plants is similar to that performed for complainant by the Culver, except that the haul in the latter case appears to be somewhat longer.

The track maintenance undertaken by complainant under the lease subsequently devolved upon the Culver. The record shows clearly that at the time when the New York Central discontinued payment to the Culver these tracks were in such condition that it was impossible for the engines of the trunk line to operate over them. The record does not indicate that complainant has ever requested the New York Central to perform the switching service, or that it or the Culver has offered to put the tracks into such condition as to make that possible. At the hearing the assistant general freight agent of the New York Central, testifying for defendants, stated that his company would doubtless be willing to do the switching if the track was put into proper condition for their locomotives to operate over.

In *National Malleable Castings Co. v. P. & L. E. R. R. Co.*, 51 I. C. C., 537, 542, we said:

A determination that it is the duty of the line-haul carrier to perform a particular switching and spotting service, for the performance of which by the industry an allowance should be paid, presupposes that the nature of the industry is such as to permit the performance of that service by the carrier.

The record indicates that at no time since April 1, 1914, has it been possible for the line-haul carrier to perform the switching service to and from complainant's plant. It is manifest that the circumstances and conditions surrounding the performance of the service at the plants of complainant's competitors are so different from those obtaining at complainant's plant that no undue prejudice can be said to have arisen therefrom.

We find that the cancellation of the allowance formerly paid to complainant or its plant facility, the Culver & Port Clinton Railroad, did not subject complainant to the payment of unreasonable, unjustly discriminatory, or unduly prejudicial rates. In view of this finding the adequacy of the subsequently established allowance of \$1.75 per car will not be considered here.

The complaint will be dismissed.

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No. 11545.

NATIONAL INDUSTRIAL TRAFFIC LEAGUE

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY ET AL.

Submitted January 6, 1921. Decided March 15, 1921.

The Commission is without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for the construction, maintenance, and use of industrial or private side tracks. Complaint dismissed.

Luther M. Walter and John S. Burchmore for complainant.

R. W. Barrett for defendants.

Clifford Thorne, W. Y. Wildman, and John D. Reynolds for American Farm Bureau Federation, Farmers' National Grain Dealers' Association, Grain Dealers' National Association, Western Petroleum Refiners' Association, and American Independent Petroleum Association, interveners.

John E. Benton for National Association of Railway and Utilities Commissioners.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

Complainant is a voluntary organization composed of trade and traffic associations and individual shippers. By this complaint it alleges that defendants, which comprise practically all railroads subject to the interstate commerce act, have severally made numerous leases for the use of railroad property and contracts for the construction, maintenance, and use of industrial side tracks containing clauses limiting their liability for loss and damage caused by fire from locomotives while operating over such tracks. These liability clauses are attacked as unjust, unreasonable, unduly prejudicial, and otherwise unlawful in violation of sections 1, 3, and 20 of the interstate commerce act. We are asked, in the complaint, to require the defendants to insert in all of their leases of railroad property and in their sidetrack agreements, uniform, reasonable, nondiscriminatory, non-preferential, and otherwise lawful liability clauses.

Soon after the complaint was filed complainant and defendants entered into negotiations with a view to an amicable solution of the matters in issue. As a result of these negotiations there was submitted to us jointly by counsel for complainant and for defendants

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the proposal that we approve the following liability clauses; that we recommend their general adoption and use in contracts for the construction, operation, and maintenance of industrial sidetracks; and that the complaint be dismissed:

It is understood that the movement of railroad locomotives involves some risk of fire, and the industry assumes all responsibility for and agrees to indemnify the railroad company against loss or damage to property of the industry or to property upon its premises, regardless of railroad negligence, arising from fire caused by locomotives operated by the railroad on said track, or in its vicinity for the purpose of serving said industry, except to the premises of the railroad and to rolling stock belonging to the railroad or to others, and to shipments in the course of transportation.

The industry also agrees to indemnify and hold harmless the railroad company for loss, damage, or injury from any act or omission of the industry, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about said track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

The interveners filed a petition opposing the action urged by complainant and defendants.

After consideration of the matters presented we advised the parties that if the essence of the complaint is contained in the proposed liability clauses we inclined to the view that we were without jurisdiction to pass upon a contract of this character, and requested them to file briefs upon the question of our jurisdiction. Briefs have since been filed by the parties and by the National Association of Railway and Utilities Commissioners as *amicus curiæ*. No hearing has been had, and the case stands submitted on brief upon the jurisdictional question.

The allegation of unreasonableness is predicated on that part of section 1, paragraph (9), of the interstate commerce act, which provides:

Any common carrier subject to the provisions of this Act, upon application of any * * * shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such * * * private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same * * *. If any common carrier shall fail to install and operate any such switch or connection * * *, such shipper * * * may make complaint to the Commission, * * * and the Commission shall * * * determine as to the safety and practicability thereof and justification and reasonable compensation therefor, * * *.

This language clearly refers to the construction, maintenance, and operation of switch connections. We have held that under its provisions we have no authority to require a railroad to construct

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a private sidetrack, and that our authority is limited to requiring a carrier to make a switch connection with a private sidetrack. *Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co.*, 16 I. C. C., 587. Complainant refers to our report in *Imperial Wheel Co. v. St. L., I. M. & S. Ry. Co.*, 20 I. C. C., 56, and alleges that we there took jurisdiction of a similar question. We there said:

We are therefore left to consider the single question whether a carrier, as a condition precedent to its undertaking to make a switch connection and to operate a spur track leading to an industry, may require the industry to indemnify it from liability and claim for loss and damage by fire caused by the sparks or burning coals from its locomotive on the spur track.

We found that the conditions respecting its liability for fire on the premises of the complainant, which defendant insisted upon, did not seem unreasonable, and dismissed the complaint. However, in that case the question of jurisdiction was not specifically raised. And subsequently in *Ralston Townsite Co. v. M. P. Ry. Co.*, 22 I. C. C., 354, we declined to take jurisdiction to enforce the performance of a sidetrack agreement. It was there pointed out that complainant failed to distinguish between the physical characteristics of a switch connection, which we can require in a proper case under authority conferred by section 1, and a private sidetrack, which we can not require a carrier to construct.

It is therefore apparent that we had no jurisdiction under section 1 of the act to regulate commerce to require the construction, maintenance, and operation of private sidetracks. Nor does it appear that the act as amended by the transportation act, 1920, enlarges our powers in that respect. While paragraphs (18) to (21), inclusive, of section 1 of the interstate commerce act contain provisions for the extension or abandonment of the lines of common carriers by railroad upon authority from us and empower us under the conditions therein set forth to require any common carrier by railroad subject to the act, after hearing, in a proceeding upon complaint or upon our own initiative without complaint, "to provide itself with safe and adequate facilities for performing as a common carrier car service as that term is used in this act, and to extend its line or lines," paragraph (22) thereof specifically provides that:

The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one state, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

From this it is clear that industrial sidetracks, located or to be located wholly within one state, are excluded from the provisions of paragraphs (18) to (21), inclusive, of section 1 of the act.

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The demands upon a carrier which lawfully may be made are limited by its duty. *Gt. Northern Ry. v. Minnesota*, 238 U. S., 340, 346. But it is not its duty as a common carrier to enter into a contract to lease a railroad siding to a shipper or to enter into an agreement to operate privately owned sidetracks. The liability clauses complained of do not involve the question of rates, nor the matter of facilities to be furnished by the railroad company for the transportation of property under its obligation as a common carrier, and section 1 does not confer upon us the power to pass upon liability clauses of leases or of agreements for the maintenance, use, and operation of such industrial sidetracks.

This brings us to a consideration of the allegation that the failure or refusal of defendants to establish and maintain uniform liability clauses in their leases and agreements for the construction, maintenance, and operation of industrial sidetracks results in undue and unreasonable prejudice and disadvantage. In *Guilford Lumber Mfg. Co. v. S. Ry. Co.*, 53 I. C. C., 669, 670, we said:

The complaints allege violations of section 3, but fail to designate the individuals, organizations, communities, or traffic accorded undue or unreasonable preference or advantage, to the undue prejudice of complainants. Defendants were not put upon notice of the particular violations of law they were called upon to defend. Under these circumstances, and as we construe the record before us, no issue of undue prejudice under section 3 has been properly raised * * *.

The allegation of undue prejudice is general in character and as no hearing has been had this issue can not be determined at this time. Whether undue or unreasonable preference or advantage exists in a particular case is a question of fact. It does not follow as a matter of law that the present practices of defendants are unduly prejudicial because they are not uniformly the same in all parts of the country and as to all shippers. Differences in conditions may justify variations in rules and practices. Uniformity is highly desirable with respect to many practices of common carriers. But where uniformity injuriously affects practices that are essentially local it is not desirable. In any event it can not be said that the failure of defendants to establish uniform liability clauses with respect to leases of industrial sidetracks is of itself unduly prejudicial. If notwithstanding the decision here made of the jurisdictional question complainant desires to press the issue of undue prejudice, the matter may again be brought to our attention for consideration.

It is also alleged by complainant that the liability clauses in existing leases for industrial sidetracks are in violation of section 20 of the act in that they unlawfully limit defendants' liability for loss,
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damage, or injury to property. Paragraph (11) of section 20 provides:

That any common carrier, railroad or transportation company subject to the provisions of this act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed * * *.

The property referred to in this provision obviously refers to property offered for transportation, and does not relate to buildings or other property. The Supreme Court of the United States in *Chicago, R. I. & Pac. Ry. v. Maucher*, 248 U. S., 359, said: "But the Carmack Amendment deals only with the shipment of property." If the parties desire to make use of the liability clauses upon which they have agreed we think that in the second clause there should be inserted words similar to those in the first excepting shipments in the course of transportation. Complainant refers to our decision in *Bills of Lading*, 52 I. C. C., 671, and calls attention to what we said on the question of jurisdiction. It contends that "the terms of the statute and the interpretation thereof by the Commission are on all fours with the situation presented in this case." We there referred to the fact that the act specifically made it the duty of all carriers subject thereto to establish just and reasonable regulations and practices affecting the issuance, form, and substance of bills of lading, and said:

Thus the Commission has power and authority under the act to determine the reasonableness of rules, regulations, and practices of the carriers, and to require them to cease and desist from the enforcement of rules and regulations, and the continuance of practices found to be unreasonable or unjustly discriminatory, or unduly prejudicial. And herein lies the Commission's power to lay hands upon the 'issuance, form, and substance' of bills of lading. The act specifically requires carriers subject thereto to issue bills of lading. The Commission has undoubted authority to enforce this requirement in a proper proceeding.

The decision in that case has reference only to rules, regulations, and practices governing the transportation of property. It has nothing to do with liability clauses contained in leases or agreements involving property not offered for transportation. That report also points out that the act specifically requires carriers subject thereto

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to issue bills of lading. But it does not follow that we have like authority to prescribe the form and substance of liability clauses in leases and agreements affecting industrial sidetracks. We have repeatedly held that claims against common carriers for loss, damage, or delay to property are governed by general legal principles, and are determinable by the courts.

An order will be entered dismissing the complaint.

No. 11470.

MEMPHIS FREIGHT BUREAU

v.

DIRECTOR GENERAL, AS AGENT.

PORTIONS OF FOURTH SECTION APPLICATIONS
NOS. 799, 1548, AND 2138.

Submitted October 25, 1920. Decided March 3, 1921.

Rate on cotton from Jackson, Tenn., to Cordova, Ala., found to have been unreasonable. Reparation awarded.

Jas. S. Davant for complainant.

D. Lynch Younger, R. A. Chadwick, and Charles J. Risey, jr., for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner. Upon consideration of the record we have reached conclusions differing from those suggested by him.

Complainant, an association of shippers, on behalf of two of its members, Robert Cohn and John Ellett, copartners engaged in the cotton business at Memphis, Tenn., under the firm name of Cohn & Ellett, alleges that the rate charged on 325 bales of cotton shipped February 4, 1919, from Jackson, Tenn., to Cordova, Ala., was unreasonable, unjustly discriminatory, and unduly prejudicial. Violation of the long-and-short haul clause of section 4 of the act to regulate commerce is also alleged. An award of reparation is the only relief sought. Rates will be stated in amounts per 100 pounds.

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The shipment, weighing 170,639 pounds, was loaded in three cars and moved over the Mobile & Ohio to Tupelo, Miss., and the St. Louis-San Francisco beyond, 221 miles. The cotton was tendered for shipment uncompressed with carrier's privilege to compress, and was compressed by the carriers at their expense. No joint commodity rate from Jackson to Cordova was in effect. Freight charges were collected in the sum of \$2,073.26, at the first-class rate of \$1.215. The tariff publishing this rate provided that class rates would not apply on cotton, and that, in the absence of through commodity rates, combination rates would apply. The lowest combination was \$1.11, composed of commodity rates of 55 cents to Douglasville, Ga., a point on the Southern beyond Cordova, and 56 cents Douglasville back to Cordova. This was applicable under rule 5(b) of Tariff Circular 18-A. The shipment was therefore overcharged.

Other rates on uncompressed cotton, carriers' privilege to compress, were cited by complainant, as, for example: From Jackson to points in Alabama, Georgia, Louisiana, and Tennessee, for distances varying from 178 to 670 miles, 52 to 81 cents; from Jackson to New York, N. Y., 1,216 miles, 91.5 cents; and from Memphis to Cordova, 218 miles, 50 cents. Rates on compressed cotton were generally 10 cents lower than those cited.

Effective August 24, 1919, a rate of 60 cents from Jackson to Cordova on compressed cotton, and on uncompressed cotton to be transported to destination uncompressed, usually known as "flat" cotton, was published to apply over the Illinois Central. On September 25, 1919, the same rate was made effective over the route of movement. It does not appear that a commodity rate on uncompressed cotton, carrier's privilege of compression, has been published, but it appears that the usual basis of the Mobile & Ohio in this territory is to make such rates the same as on flat cotton. In other parts of the south they are lower than on flat cotton. *Louisiana Cotton*, 46 I. C. C., 451. Reparation is sought to the basis of the flat-cotton rate of 60 cents, which, at the average car loading of this shipment, 56,879 pounds, would yield earnings per car-mile of \$1.55 and per ton-mile of 54.3 mills.

No evidence was introduced by defendant.

We find that the applicable rate was unreasonable to the extent that it exceeded 60 cents per 100 pounds; that Robert Cohn and John Ellett, copartners under the firm name of Cohn & Ellett, made the shipment as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of \$1,049.42, with interest, which amount includes the overcharge mentioned.

In connection with this complaint there were assigned for hearing portions of fourth section applications Nos. 799, 1548, and 2138, filed by the St. Louis & San Francisco Railway, Southern Railway, and Mobile & Ohio Railroad, respectively, by which carriers named as parties thereto ask authority to continue to charge for the transportation of compressed cotton from Memphis and Somerville, Tenn., to Cordova, Ala., rates which are lower than the rates contemporaneously maintained from Jackson, Tenn., and other intermediate points; and from Jackson, Tenn., to Savannah and Brunswick, Ga., rates which are lower than the rates contemporaneously maintained to Cordova, Ala., and other intermediate points. No evidence in support of the fourth section applications was offered. Counsel for defendant stated that the carriers were working on a general revision of the cotton rates in this territory; that some of the fourth section departures covered by these applications had already been removed; and that when the contemplated revision was completed there would remain to be considered departures from the fourth section in a few exceptional cases only, evidence in justification of which would then be offered. The record is insufficient for the proper determination of those portions of the applications assigned for hearing, and the consideration thereof will be deferred to a later proceeding.

EASTMAN, Commissioner, dissenting:

It seems to me that 70 cents, rather than 60 cents, would have been a reasonable rate on the traffic in question. This was the rate recommended by the examiner in his proposed report, and no exceptions were filed by complainant. Generally throughout the south rates on uncompressed cotton, carriers' privilege of compression, are 10 cents higher than the rates on compressed cotton, the 10-cent spread representing the cost of compression; and this basis was approved in *Louisiana Cotton, supra*. Assuming, therefore, that 60 cents was a reasonable rate on compressed cotton during the period of movement—and there is nothing to indicate that it was too high—it follows that 70 cents would have been reasonable on the traffic involved.

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INVESTIGATION AND SUSPENSION DOCKET No. 1246.
SWITCHING CHARGE TO AND FROM SOUTH TACOMA,
WASH.

Submitted February 15, 1921. Decided April 4, 1921.

Proposed increased arbitrary on interstate traffic, in carloads, between South Tacoma, Wash., and points on the Great Northern, found not justified. Suspended schedules ordered canceled.

R. W. Clifford and O. O. Calderhead for Public Service Commission of Washington.

J. W. McCune and H. O. Berger for Tacoma Commercial Club.

Charles S. Albert and R. J. Hagman for Great Northern Railway Company.

L. B. DaPonte for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to become effective November 25, 1920, respondents, the Great Northern Railway Company and Northern Pacific Railway Company, proposed to increase from \$6.50, as at present, to \$8 per car the arbitrary over Tacoma, Wash., on certain carload traffic between South Tacoma, Wash., and points on the Great Northern not reached by the Northern Pacific in Washington, Idaho, the Dakotas, Iowa, Wisconsin, and Minnesota. Upon protest of the Tacoma Commercial Club and Chamber of Commerce, the schedules, in so far as they relate to interstate commerce, were suspended by us until March 25, 1921, and were subsequently suspended until April 24, 1921. The proposed increased arbitrary, in so far as it would apply on Washington intrastate traffic, was suspended by the Public Service Commission of Washington, and a joint hearing was held with that commission.

South Tacoma is within the municipal and railroad yard limits, though beyond the switching limits, of Tacoma on the Northern Pacific, the only line which owns rails extending to South Tacoma. The Great Northern has trackage rights over the Northern Pacific from Seattle to Vancouver, Wash., and handles traffic through Tacoma and South Tacoma; and the Great Northern and Northern Pacific reach Portland, Oreg., from Vancouver over the lines of the Spokane, Portland & Seattle Railway, which they jointly own. The

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trackage contract between respondents provides that the Great Northern shall neither receive nor deliver shipments at South Tacoma, and its traffic destined to or originating at that point is interchanged with the Northern Pacific at Tacoma. The latter performs the movement between Tacoma and South Tacoma.

In *Public Service Commission, Wash., v. N. P. Ry. Co.*, 23 I. C. C., 256, 26 I. C. C., 272, we required the Great Northern, as well as the Oregon-Washington Railroad & Navigation Company and the Chicago, Milwaukee & St. Paul Railway Company, to establish joint interstate rates in connection with the Northern Pacific to and from South Tacoma. Similar action with respect to Washington intrastate traffic had been taken by the Washington commission. In certain instances the joint rates were constituted by adding an arbitrary of \$5 per car to the Tacoma rates. A more detailed explanation of the situation will be found in the cases cited and need not be repeated here.

Following general order No. 28, respondents increased the \$5 arbitrary to \$6.50 for intrastate application, and in accordance with our decision in *Increased Rates, 1920*, 58 I. C. C., 220, increased the interstate arbitrary to the same figure. They seek to justify the proposed charge of \$8 on the ground that such increase was authorized as to intrastate traffic August 26, 1920, by the Washington commission, and as to interstate traffic by general order No. 28, but that increases were not made at the times as so authorized through inadvertence. How so important rate advances were overlooked for long periods is not explained satisfactorily. The propriety of the increase of the interstate arbitrary is alone before us.

Protestants question whether an increase in this arbitrary was authorized by general order No. 28. That order is construed not to authorize an increase in switching charges incidental to line hauls, and suggestion is made that the arbitrary here in question is such a charge. By orders of both the state commission and this Commission the carriers were required to establish joint rates to South Tacoma. Under our tariff regulations the joint rates upon interstate traffic might be published as single amounts or by adding separately an arbitrary to the Tacoma rates. That the latter form of publication was chosen does not render the rates any the less joint rates. However, the mere fact that the arbitrary might have been increased under general order No. 28 at the time of its promulgation does not necessarily now justify the rate proposed. The burden still lies with the respondents to justify the proposed increased rate.

To sustain this burden respondents showed that under general order No. 28 and our order in *Increased Rates, 1920, supra*, the Oregon-Washington Railroad & Navigation Company increased the

\$5 arbitrary to \$8; that the intraterminal switching charges of the Northern Pacific within the Tacoma switching district range from \$9.50 to \$12.50 per car; and that under the divisional arrangement between the Great Northern and Northern Pacific the former is compelled to allow the latter as its division of the joint rate \$12.50, the full amount of its local between Tacoma and South Tacoma.

The \$5 arbitrary of the Chicago, Milwaukee & St. Paul Railway Company for both interstate and intrastate application remained at that figure until August 26, 1920, when it was increased to \$6.50. The switching charges of the Northern Pacific within the switching limits of Tacoma, applicable to traffic on which its connections get a line haul, range from \$3 to \$9, except that the charge is \$9.50 in those cases in which the tariffs of connecting lines provide for absorption of Northern Pacific switching charges at Tacoma. A witness for the Great Northern testified that it absorbs such charges on lumber and forest products, live stock, and on ore going to the Tacoma smelter. The divisions accruing to the Northern Pacific out of the joint rate appear to have kept pace approximately with its local South Tacoma rate, which was, about the time of the establishment of the joint rates, 2 cents per 100 pounds, with a minimum charge of \$6 and a maximum charge of \$10. The result was that the Great Northern then made a net absorption of from \$1 to \$5 per car on South Tacoma traffic. At no time since the establishment of the joint rates has the arbitrary equaled the Northern Pacific's division out of the joint rate. As between the carriers the effect of the proposed increase would be merely to reduce the net absorption made by the Great Northern from \$6 to \$4.50.

Upon all the facts of record we are of opinion and find that respondents have not justified the proposed increased rate.

Protestants desire that South Tacoma should be included within the free switching limits of Tacoma. They recognize that the respective commissions can not properly deal with that question in this proceeding, but state it to be their purpose to present complaints placing that question in issue. Our finding here is not determinative of that question.

An order will be entered requiring the cancellation of the schedules and discontinuing this proceeding.

HALL, *Commissioner*, dissenting:

I agree with everything in this report except the finding. The facts of record, including those stated in the report, to my mind lead to the conclusion that the proposed increase has been justified. The \$5 arbitrary was fixed by us in 1913. If it was reasonable then, the two increases of 25 per cent, one made and the other now

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sought to be made, would result in a reasonable arbitrary now. Both increases have had ample warrant in the increased cost of operation. The other components of the joint rates have taken both increases. This component, the arbitrary, has taken only one.

No sufficient reason appears for the difference in treatment of two parts of the same joint rate.

I am authorized by COMMISSIONER DANIELS to state that he concurs in the above expression.

COMMISSIONER ESCH did not participate in the disposition of this case.

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No. 11009.

SOUTHERN HARDWOOD TRAFFIC ASSOCIATION ET AL.

v.

DIRECTOR GENERAL, ABILENE & SOUTHERN RAILWAY
COMPANY, ET AL.

Submitted December 9, 1920. Decided March 15, 1921.

1. Defendants' participation in tariffs carrying joint rates on lumber and forest products and permitting under such rates transit at certain points while contemporaneously denying similar transit upon the same through routes at Memphis, Tenn., and Louisville, Ky., subjects complainants to undue prejudice and disadvantage. Undue prejudice ordered removed.
2. Transit arrangements on lumber and forest products at Memphis and Louisville, of the character and extent prayed for by complainants, not shown to constitute a necessary transportation service which defendants should be required to furnish at a reasonable charge under section 15 of the act.

J. V. Norman and Norman & Graham for complainants.*R. V. Fletcher, William A. Northcutt, Claudian B. Northrop, C. P. Stewart, A. P. Humburg, and Henry G. Herbel* for Director General of Railroads.

A. P. Humburg for Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, and Chicago, Memphis & Gulf Railroad Company; *William A. Northcutt and William Burger* for Louisville & Nashville Railroad Company; *Henry G. Herbel and James M. Chaney* for Missouri Pacific Railroad Company; *Claudian B. Northrop* for Southern Railway system and Mobile & Ohio Railroad Company; *R. A. Chadwick* for Mobile & Ohio Railroad Company; *C. P. Stewart* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; *George E. Schnitzer* for Chicago, Rock Island & Pacific Railway Company; *A. J. Lehmann* for St. Louis Southwestern Railway Company; and *L. P. Nash* for St. Louis-San Francisco Railway Company.

Ray Williams for Cairo, Ill., lumber interests and *L. S. McDonald* for certain Arkansas lumber interests, interveners.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed and oral argument has been had thereon.

The complaint herein was filed November 10, 1919, by certain hardwood lumber dealers and manufacturers of Memphis, Tenn., and Louisville, Ky., individually and as members of an unincorporated association. Practically all common carriers subject to the interstate commerce act are named as defendants. The gravamen of the complaint is defendants' refusal to establish transit arrangements under which hardwood lumber and forest products; originating at points in the south and southwest and destined to points in the north, east, and west, may be stopped at Memphis or Louisville, through routes and joint rates being applicable via those respective cities, for yarding, assorting, grading, drying, dressing, or further manufacture. It is alleged that such transit arrangements are accorded dealers at Buffalo, N. Y., Toledo, Ohio, Chattanooga, Tenn., and elsewhere in connection with through routes and joint rates applying also via Memphis or Louisville, and that complainants are thereby subjected to undue prejudice, in violation of section 3 of the act. Another allegation of undue prejudice is predicated on the fact that transit is permitted at Memphis and Louisville on grain, cotton, and other articles but denied on lumber. It is further alleged that the transit arrangement desired by complainants is a commercial necessity to the lumber industry, and that the transportation service incident thereto is a necessary transportation service which defendants should be required to furnish at Memphis and Louisville at a reasonable charge under section 15 of the act. We are asked to establish reasonable and nondiscriminatory rules and charges governing transit on lumber and forest products, whether hardwood or pine, originating at points in the states south of the Ohio and Potomac rivers and east of the Mississippi River and at points in the states of Louisiana, Texas, Arkansas, Missouri, and Oklahoma when the lumber is stopped at Memphis or Louisville for yarding, assorting, grading, drying, dressing, or further manufacture into articles taking the lumber rates, and reshipped to points of destination north of the Ohio River, to points in the states of Virginia and West Virginia, and to points in western trunk line and trans-Missouri territories, provided the joint rates between said points of origin and destination apply via Memphis or Louisville and no back hauls are involved.

Intervening petitions in opposition to the complaint were filed in behalf of certain lumber dealers at Cairo, Ill., and at various points in Arkansas.

Complainants urge that the tracts of timber from which hardwood lumber is cut in the southern states are comparatively small in size and widely scattered, and that much of the sawing is done by small mills, some of which are portable and are operated by farmers. The average daily capacity of one of these small saw mills is from 5,000 to 7,000 feet, and the output consists of different

sizes, grades, and varieties of lumber. The original establishment of transit arrangements on hardwood lumber at various points in the south a number of years ago grew out of the following circumstances and conditions. The consuming markets of hardwood lumber require it in carload lots of certain sizes, species, and grades, and, as it was impossible under the conditions then existing, for a small mill to accumulate a stock large enough to enable it to make shipments direct to consuming points, concentrating yards were established at various places, to which lumber was shipped from the small mills, there assorted, graded, dried, and dressed, and later re-shipped to meet the requirements of the trade. See *Nashville Lumbermen's Club v. L. & N. R. R. Co.*, 40 I. C. C., 59, 60.

In 1896 Memphis began to grow in importance as a lumber market, and from 1900 to 1908 it was the largest wholesale hardwood market in the country, due in part to its geographical situation but mainly to a reconsigning or reshipping arrangement which for many years had been maintained by the railroads serving it, under which dealers there could ship in lumber from southern and western territory, unload, yard, assort, grade, and dry it, and within 90 days reship it to eastern and northern points at rates approximately from 2 to 4 cents per 100 pounds less than the combination of rates to and from Memphis, but not less than, although in many instances the same as, the through rates. In 1908 a complaint was filed with us by a lumber dealer at Cairo. Via this point through rates were ordinarily made on the Cairo combination. The complainant alleged that Cairo was unduly prejudiced by the arrangement accorded Memphis; and in September, 1908, pending our decision, the arrangement at Memphis was withdrawn. There was substituted a reshipping tariff, still in force, providing proportional rates on lumber yarded at Memphis and subsequently reshipped, the combination of inbound and outbound rates under this tariff being in general 1 cent per 100 pounds less than the full combination but higher than the through rates then in effect. In our decision in that proceeding, *Sondheimer Co. v. I. C. R. R. Co.*, 17 I. C. C., 60, decided June 29, 1909, we found that the reshipping arrangement at Memphis, if proper rates were applied thereunder, was not unduly prejudicial to Cairo, and that the rates established following the filing of the complaint were apparently satisfactory to the various interests and removed the cause of complaint. At the present time there is also an arrangement permitting rough lumber to be drawn into Memphis from points on the Illinois Central system, to be dressed or manufactured into flooring, ceiling, or other smaller pieces of lumber, and reshipped at the through rate from the original point of shipment to final destination, plus a transit charge of 2 cents per 100 pounds. The only other transit arrangement available to Memphis dealers is

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one maintained by the Missouri Pacific on lumber originating at points west of the Mississippi River. This arrangement allows the lumber to be stacked, dried, graded, and manufactured at Memphis and reshipped on the basis of the through rate from point of origin to final destination. The withdrawal of the general transit arrangement from Memphis in 1908, together with subsequent greater increases in the aggregates of the in-and-out rates than in the through rates, coincided with the marked decline of that city as a hardwood market, as is shown by the fact that there are now only one or two yards doing a straight rehandling business compared with 31 in 1908.

As the hardwood lumber industry developed in the south, Louisville also became an important hardwood market, though without the aid of transit arrangements, for the reason that originally all lumber rates broke on the Ohio River crossings. Hence, dealers at Louisville were able to bring in lumber, hold it indefinitely, and ship it out in any form desired on the combination of local rates. In *Norman Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 239, we refused to require the establishment of a transit arrangement at Louisville in order to eliminate alleged undue preference of Memphis under the then existing relationship, but held that inasmuch as Louisville as well as Cairo was a rate-breaking point in the construction of through rates there was no necessity for the establishment of transit at Louisville, and that the situation should be corrected by fixing a proper relationship between the Louisville rates and those applying through Cairo, the latter having been adjusted with respect to the Memphis rates as a result of the *Sondheimer Case*, *supra*. In recent years, however, the practice of constructing through rates on lumber from the south by combination to and from Louisville or other Ohio River crossings has been gradually abandoned, and at the present time almost no through rates are so made. As a result of this change, it is testified, about 16 concerns have been forced to give up the rehandling of lumber at Louisville. Those who have remained in business, in the hope of regaining the advantages which they possessed under the former rate adjustment, for several years have urged the carriers to accord them transit arrangements in connection with the through rates, but without success.

The handicap imposed on Memphis and Louisville by the loss of the positive advantages which they formerly enjoyed as rehandling points for lumber has been further increased because of the fact that carriers serving Buffalo, Grand Rapids, Mich., Fort Wayne and Logansport, Ind., and Toledo, permit transit on lumber at those points in connection with joint rates on lumber from southern points to destinations in the north and east, applying via Louisville or Memphis or both. While at the time of our decision in the

Sondheimer Case, supra, complainants' principal competition apparently was with Ohio River points, the record indicates that complainants now encounter vigorous competition from dealers located at all of the northern cities named above, but in particular from those at Buffalo. From an examination of the tariffs it appears that transit arrangements protecting the through rate on rough hardwood lumber from the south stored, assorted, or dried were not established at Buffalo until July, 1912. Apparently such transit arrangements were originally established by the Buffalo lines in connection with traffic from the west, the natural route of which lay through Buffalo, the location of which point at the eastern extremity of Lake Erie made it a convenient point of concentration and reshipment of that traffic. But when the source of a large portion of the lumber supply veered from the west and northwest to the south the Buffalo carriers, so far as was within their power, cooperated with lumber dealers at Buffalo, through the medium of favorable rates and services, in aiding them to retain their interest in the traffic. *Lumber Transit Privileges at Buffalo, N. Y.*, 52 I. C. C., 31, 38. As above shown, this operated to the serious disadvantage of Memphis and Louisville, notwithstanding their long recognized advantages as concentrating points on lumber from the south and the natural advantages of their favorable location with respect to the southern source of supply. To a somewhat less extent complainants also are in competition with lumbermen at Chattanooga, Meridian, Miss., and other southern points, who are accorded transit arrangements by the Southern Railway Company. The transit arrangements available to complainants' competitors vary in detail, but in general they permit lumber to be stopped for yarding, assorting, drying, or further manufacture and to be reshipped at much lower total transportation charges than complainants are forced to pay in rehandling lumber originating at the same points and reshipped to the same points of destination. The disadvantage of Memphis and Louisville, in contrast with the above-named transit points, is shown by a number of illustrative exhibits, based upon uniform loads of 50,000 and 60,000 pounds, to range from \$2.50 to \$72 per car, based on the rates in effect prior to *Increased Rates, 1920*, 58 I. C. C., 220.

Complainants also desire the establishment of arrangements which will permit the manufacture of finished staves, heading, and cooperage material from rough staves and their subsequent shipment to northern and eastern destinations on the through rates applicable to lumber originating at the same points and shipped to the same points of ultimate destination. At the present time the Louisville & Nashville permits such transit at Louisville on lumber originating at Kensett, Ark., but the evidence shows that no use has been made of this arrangement and that its withdrawal is contemplated. It is testi-

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fied that competing manufacturers at Dickson, Tenn., Bay City, Mich., Cleveland, Ohio, Toledo, and Buffalo are able to ship lumber from the south and southwest and stop it in transit for manufacture into cooperage material at those points on through rates, whereas Louisville manufacturers must pay considerably higher combination rates.

Although complainants disclaim any attack upon the reasonableness of the local rates to and from Memphis and Louisville, they point out that the disadvantages of those cities as rehandling points for lumber were augmented by the rate increase of 25 per cent, with a maximum of 5 cents per 100 pounds, under general order No. 28 of the Director General of Railroads. This increase was applied both to the inbound and outbound rates paid by complainants but only once to the through rates available to their competitors at Buffalo and elsewhere. For example, prior to June 25, 1918, the joint rate from Beaumont, Tex., to Cleveland was 32.8 cents and the combination rate via Memphis was 39.8 cents. Under general order No. 28 the joint rate became 38 cents and the combination rate 49 cents. In this manner the spread between various joint rates applicable via Memphis and Louisville and the combination rates constructed on those points was increased as much as 4.7 cents per 100 pounds in some instances. A representative of Cairo lumber dealers, interveners, also protested against the double increases under general order No. 28, but opposed the extension of transit arrangements as a means of readjusting relationships between various markets.

While complainants aver that they are prejudiced chiefly by the transit arrangements accorded Buffalo and other northern cities and concede that the prejudice could be removed by the withdrawal of transit from their competitors, they strongly urge that transit should be established at Memphis and Louisville not only to correct the alleged violations of the third section of the act but also for reasons of so-called "commercial necessity." They assert that the small saw-mills in the south need constant supervision and financial aid and that, because of the geographical situation of Memphis and Louisville, dealers at those points are better able to furnish this aid and thereby increase the production of the small mills, provided their output could be profitably rehandled. In this connection it is testified that the number of small mills in operation to-day is not more than 25 per cent of that in 1907, and that the granting of transit at Memphis would increase the production of lumber from 25 to 80 per cent because the operators of small mills prefer to deal with wholesalers close to home. In calling attention to the widespread establishment of transit arrangements on lumber, complainants cite 22 such arrangements which were granted in the southern region by the United States Railroad Administration, with a transit charge in most instances of 2 cents per 100 pounds. They also cite transit arrange-

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ments in effect at southern points on other commodities, particularly cotton, cottonseed oil, and grain. Complainants submit a set of proposed rules to govern the transit arrangement which they desire, permitting—

the stopping for yarding, assorting, grading, drying, dressing, or further manufacture into dressed lumber, box and barrel material, ceiling, flooring, handles in the rough, heading, hoops, lumber siding, spokes, club turned, staves and vehicle material in the rough or in the white, and its forwarding to a subsequent and further destination, and will apply to such lumber, etc., as passes through lumber mills, storage yards, warehouses, or factories.

The processes listed above appear to be more numerous and varied than those now permitted at any one competing point, but complainants state that they would be satisfied with the same general kind of transit now granted by the Southern Railway at Chattanooga, Meridian, and elsewhere, which includes sorting, drying, and dressing. The proposed rules do not include a "kind for kind" rule, nor provide for daily reports, and complainants cite a number of transit tariffs from which such provisions have been omitted.

The principal lumber-carrying lines serving Louisville and Memphis are the Louisville & Nashville and the Illinois Central. Both oppose the extension of transit arrangements applying to lumber. The Southern Railway, whose lines also reach Memphis and Louisville, is willing to accord transit on the same terms on which it is granted at other points on its lines, but the Southern has relatively few joint rates applicable through Memphis or Louisville. At the hearing representatives of the St. Louis-San Francisco Railway offered to extend to Memphis the same reshipping arrangements maintained by it at other points on its line. This offer was accepted by complainants, who thereupon withdrew their complaint, so far as transit at Memphis is concerned, as to that line, as well as to the St. Louis Southwestern Railway and the Missouri Pacific Railroad which reach Memphis from the west but participate in no joint rates via that city and the competing points north of the Ohio River. The Chicago, Rock Island & Pacific Railway, which enters Memphis from the west, opposes the granting of transit at that point, on the grounds, among others, that it does not participate in the haul beyond and that Arkansas and Louisiana milling points would be subjected to disadvantage.

Defendants deny that there is any commercial necessity for the establishment of the transit arrangements desired by complainants. They submit testimony tending to prove that most of the hardwood lumber originating in territory served by the Illinois Central is now manufactured by large mills, permanently situated at various points, including Memphis, said by complainants to be the world's largest manufacturing center for hardwood lumber. It is testified that the

small mills are much less important now than when the hardwood lumber industry in the south was in its experimental stage, and that the operators of the small mills have never complained to the carriers of any difficulties in marketing their product because of the absence of transit arrangements at Memphis and Louisville. It is further stated that most of the output of the small mills goes directly to consuming markets, only a small part being rehandled at points where transit is available.

The Illinois Central and Louisville & Nashville object to the establishment of transit at Memphis and Louisville, on the ground that it would result in a material sacrifice of revenue, and would necessitate the granting of similar arrangements at other points on their lines. They also call attention to the fact that transit requires a double car supply and additional terminal service and urge, therefore, that it results in a waste of transportation. Furthermore, they contend that, as the rates on hardwood lumber from originating points in the south are not blanketed but graded according to distance, transit would enable dealers to manipulate the billing of their inbound shipments so as to secure the lowest freight charges and make it impossible for the carriers to protect the integrity of their through rates. Another objection is that the granting of transit at Memphis and Louisville would disturb the existing relationship between rates applying via those points and those via other Ohio River crossings.

Complainants' contention, as stated on brief, that "transit on lumber and forest products at Louisville and Memphis is a commercial necessity and the transportation service incident thereto is a necessary transportation service which the carriers should be required to furnish at a reasonable cost," is not persuasive. In *The Five Per Cent Case*, 31 I. C. C., 351, 408, we said that transit is not part of the transportation service, such as the expedited movement of freight, but "something offered to the shipper in addition to the transportation service." While our power to require the establishment of transit arrangements in appropriate cases by virtue of our jurisdiction over the practices and regulations of carriers is no longer open to question, and this power has been exercised on occasion, the record discloses no sufficient basis for its exercise here.

The relevant issue presented is that of undue prejudice and preference. For the alleged undue preference of Buffalo and other transit cities the Illinois Central and Louisville & Nashville urge that they can not be held responsible, inasmuch as those arrangements are maintained by other lines and provided for in the individual tariffs of the latter, in which the two lines named do not concur. They quote provisions in their own lumber tariffs to the effect that the granting

of transit and performance of special services shall be entirely upon the responsibility and at the cost of the carrier granting the transit and performing the services, and without requiring the participation therein of any other carrier in the absence of authority therefor from such other carrier.

Lumber Transit Privileges at Buffalo, N. Y., 33 I. C. C., 601, and 52 I. C. C., 31, which dealt with the transit arrangements on hardwood lumber at Buffalo and the relation of the southern carriers thereto, is cited in support of their contention. In that proceeding the lines serving Buffalo sought to obtain from the southern carriers increased divisions of joint rates on hardwood lumber shipped from the south and stopped for transit at Buffalo. We there held that, although the southern lines permitted connecting carriers to accord transit at Buffalo under the through rates, the transit arrangements were maintained by the Buffalo carriers so largely for their own benefit that the expense thereof should be borne by them. The southern carriers argued in that proceeding that participation by them in the Buffalo arrangements through shrinkage of their divisions would make them parties to discriminations against points in central territory and on their own lines where no transit was accorded; and they now argue that since they do not participate in the transit at Buffalo they are innocent of any unlawful discrimination against Memphis and Louisville. That proceeding, however, dealt primarily with the matter of divisions, which question was of direct concern only to the connecting carriers; and while we mentioned some of the more important arguments against the demand of complainants therein that the southern lines be required to participate in the transit arrangements at Buffalo, we expressly stated that we would not undertake to determine whether the attitude of the southern lines was correct, or to discuss in detail their objections to transit in general and participation in the particular transit arrangements involved in that proceeding.

The question presented, as stated by complainants, is whether, where transit is granted at one or more points on a through route and in connection with a joint rate it must be granted at all similarly situated points on the same through route where it is necessary or desirable, is one on which our decisions, unless allowance is made for distinguishing features in the various cases, have not been uniform. In the following cases, among others cited by defendants, we held in substance that undue prejudice did not exist by reason of such a situation where, as in those cases, it appeared that the defendants serving the points at which transit was sought were not interested in or chargeable with the transit arrangements granted in a territory far removed from the alleged prejudiced point by connecting carriers

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parties to the through routes and joint rates. *Grain & Hay Exchange v. P. Co.*, 32 I. C. C., 409; *Indianapolis Chamber of Commerce v. C., C., C. & St. L. Ry.*, 34 I. C. C., 287; *Meridian Grain & Elevator Co. v. A. & V. Ry. Co.*, 38 I. C. C., 478.

While those cases may be distinguished from the instant case upon the facts, in that they involved a possible extension of a transit arrangement to a territory which theretofore had been free from that practice whereas transit arrangements of various kinds on lumber are now accorded by most of the carriers serving the general territory in which Memphis and Louisville are located, it is difficult to distinguish them in principle. However, those cases were decided at a time when our power to regulate the rates and practices of carriers was not as broad as it now is. By the transportation act, 1920, our powers were greatly enlarged and among other things we have been given authority to establish minimum rates. Even prior to the transportation act, we had held in other cases where no question of extending transit into a new territory was involved, that so long as lines forming through routes and publishing joint rates applicable thereto allow transit on basis of the through rates at some points, they may be required to accord transit on the same basis at competing points on such through routes. *Rates on Grain Milled in Transit*, 35 I. C. C., 27; *Henderson Commercial Club v. I. C. R. R. Co.*, 36 I. C. C., 20.

In *Rates on Grain Milled in Transit*, *supra*, we said, at page 31:

Respondent's line from East St. Louis to Louisville and Cincinnati and lines south of these Ohio River crossings have formed through routes and published joint through rates from East St. Louis to points in southeastern and Carolina territories, and so long as these lines allow transit on the basis of the through rates at some points on these through routes they may properly be required to accord transit on the same basis at other milling points on these through routes. It is no answer to this proposition for respondent to say that, as an East St. Louis-Cincinnati line, it has no control over what the Louisville & Nashville, as a Cincinnati-southeastern territory line, permits in the way of transit at Atlanta, for example. By forming through routes and publishing through rates applicable thereto both of these carriers have merged their lines into one route or line so far as the particular traffic covered by these through rates is concerned. As a single through route or line, they can not withhold from some points on that route valuable services which they voluntarily perform at other points on that route.

We are of opinion that the decision last cited, applied in the light of *East Tenn., etc. Ry. Co. v. Interstate Com.*, 181 U. S., 1, which recognizes the right of carriers to take into consideration actual competition when fixing rates affecting competitive points, announces the correct view, and that the principle announced therein controls in the instant case and must be followed if unlawful discriminations are to be avoided.

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The evidence shows unmistakably that the transit arrangements in effect at Buffalo, Toledo, Grand Rapids, Fort Wayne, Logansport, Chattanooga, and Meridian in connection with joint rates applicable via those points as well as via Memphis or Louisville, to which the lines serving the latter cities, where no such transit is permitted, are parties, subject complainants to undue prejudice.

With respect to the desired transit arrangements on cooperage material, it is testified that complainants compete with dealers at Dickson, Bay City, Cleveland, Toledo, and Buffalo, all of whom are accorded transit by carriers serving those points. The character of the transit at Buffalo is not shown of record, and it appears that the arrangement at Dickson relates to rates which do not apply via Memphis or Louisville. At Cleveland, Toledo, and Bay City cooperage material may be stopped in transit for dressing, sorting, storing, grading, mixing, rehandling, kiln drying, or manufacturing in connection with rates applying via Memphis or Louisville.

The contention of complainants that lumber and forest products are also unduly prejudiced by reason of the fact that at Memphis and Louisville transit is accorded on grain, iron and steel, cotton, and various other commodities fails because of the absence of any competitive relationship between the respective commodities. *Meridian Grain & Elevator Co. v. A. & V. Ry. Co.*, *supra*.

The Illinois Central and Louisville & Nashville can not avoid responsibility for the preference enjoyed by Buffalo and the other named points on the ground that they do not concur in the transit arrangements accorded the preferred cities. By entering into, and participating in, through routes and joint rates in connection with which transit is permitted at Buffalo and elsewhere, while like transit arrangements are denied at Louisville or Memphis on the same through routes, those two carriers, as well as all other carriers parties to the through routes and joint rates, become effective instruments of discrimination. The matter of according transit at a certain point should not be regarded from the standpoint alone of one carrier in the through route, but from the standpoint of all the carriers comprising the through route. *Henderson Commercial Club v. I. C. R. R. Co.*, *supra*. In *St. Louis S. W. Ry. Co. v. United States*, 245 U. S., 136, the Supreme Court said:

Localities require protection as much from combinations of connecting carriers as from carriers whose "rails" reach them. Clearly the power of Congress and of the Commission to prevent interstate carriers from practicing discrimination against : particular locality is not confined to those whose rails enter it.

See also *Commercial Club of Omaha v. B. & O. R. R. Co.*, 52 I. C. C., 255, 264.

The difficulties which the Illinois Central and Louisville & Nashville apprehend in policing transit at Memphis and Louisville are not controlling on the issue of undue prejudice as it does not appear that any greater difficulty in policing would be experienced at those points than at the other points on the through route which are now accorded transit.

With respect to the objections urged by those carriers, that they have no control over the transit arrangements accorded by their connections, and that the establishment of similar transit at Memphis and Louisville would adversely affect their revenues, it may be said in reply that if those carriers are assured of a reasonable return for the additional services rendered in according the transit at Memphis and Louisville, it does not appear that they have any just cause for complaint. The record does not afford a sufficient basis for determining what would be a reasonable transit charge to apply at Memphis and Louisville on lumber transited at those points. If the existing transit arrangements on the through routes from and to the territories involved are continued in effect, all of the defendants who are parties thereto will be expected to establish transit arrangements and charges which will effect substantial equality as between the various transit points. If the Illinois Central or Louisville & Nashville, in establishing similar transit arrangements, conceive that their revenues are adversely affected by the failure of their connections to establish reasonably compensatory transit charges, the matter may be brought to our attention in an appropriate proceeding.

We find that defendants, in so far as they respectively participate in tariffs carrying joint rates on lumber and forest products applying through Memphis or Louisville from the territories of origin to the territories of destination embraced in the complaint, and permitting in connection with such joint rates transit at Buffalo, N. Y., Toledo, Ohio, Grand Rapids, Mich., Fort Wayne and Logansport, Ind., Chattanooga, Tenn., or Meridian, Miss., while contemporaneously denying similar transit arrangements at Louisville or Memphis on the same through routes, subject complainants to undue prejudice and disadvantage. As stated, the complaint was withdrawn as to three of the defendants, so far as transit at Memphis is concerned, and this finding is not to be understood as applying to those three carriers with respect to transit at Memphis.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

The principles announced in *Schmidt & Sons v. M. C. R. R. Co.*, 19 I. C. C., 535; *Grain & Hay Exchange v. P. Co.*, 32 I. C. C., 409; *Indianapolis Chamber of Commerce v. C., C., C. & St. L. Ry.*, 34 61 I. C. C.

I. C. C., 267; and *Meridian Grain & Elevator Co. v. A. & V. Ry. Co.*, 38 I. C. C., 478, are sound and should govern here.

The Louisville & Nashville and Illinois Central consistently refuse to accord transit on lumber. They participate in joint rates under which transit is allowed by their connections north of the Ohio River. Their lumber tariffs specifically provide that they will not be responsible for the granting of transit privileges by their connections. Under these circumstances they are not, in my opinion, chargeable with undue prejudice because they fail to provide transit upon request at Memphis and Louisville on their own lines.

An undue prejudice is one which the carrier can cure by alternative methods at its choice. If the Louisville & Nashville and the Illinois Central had the power, at their choice, to effect discontinuance of the transit service at Buffalo, for example, or to install the like at Memphis and Louisville, they would be responsible for the undue prejudice found and could be required to remove it. But now they have no real alternative. If they do not accord transit at Memphis and Louisville, the most that they can do is to cancel their participation in the joint rates under which their connections north of the river accord transit at Buffalo. Yet the law fosters joint rates, and in a proper proceeding we can require their reestablishment.

Meantime Buffalo will have had the transit. Memphis and Louisville will not and the majority report finds no sufficient basis in the record for requiring its establishment in those two cities. I think we should not fasten a finding of undue prejudice upon a carrier not responsible for the difference in treatment and without power to remove it. Transit is only one of the many accessorial services which one carrier in a chain of communication may see fit to accord and another to withhold. That chain may stretch from the Gulf to the lakes, or from one ocean to the other, through many varying local transportation conditions.

I can give no adherence to the view that because one carrier in that chain responds to the conditions under which it operates by affording an accessorial service of some kind at points on its line, every other carrier in the chain may be required to do the like or withdraw from the joint rate. That view is not formulated in the majority report but seems to follow from it as a logical conclusion.

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No. 10582.

AMERICAN CREOSOTING COMPANY

v.

DIRECTOR GENERAL, CENTRAL RAILROAD COMPANY
OF NEW JERSEY, ET AL.

Submitted May 7, 1920. Decided March 15, 1921.

1. Defendants' participation in tariffs carrying joint rates on lumber and permitting under such rates creosoting in transit at certain points, while contemporaneously denying similar transit upon the same through routes at Newark, N. J., found to subject complainant to undue prejudice and disadvantage with respect to traffic from points in southern classification territory to points beyond Newark.
2. Refusal of the defendants serving Newark to establish creosoting-in-transit arrangements at that point found not unreasonable.

J. L. Roberts for complainant.*A. H. Elder* and *H. B. Thomas* for defendants.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The issues here presented were made the subject of a proposed report by the examiner; exceptions were filed by defendants; and the parties have been heard in oral argument.

Complainant is a corporation engaged in shipping carloads of lumber, piling, telegraph cross arms, railroad ties, and wooden paving blocks from points in southern classification territory to its plant at Newark, N. J., where they are creosoted and reshipped to points of consumption in official classification territory. For the movement of this material complainant pays the rates to and from Newark, whereas its competitors in central territory and in the south have transit arrangements under which they can ship to the same points of consumption at the joint rates plus a transit charge. By its complaint filed March 24, 1919, as amended, complainant alleged that the denial to it of similar transit arrangements, which include the cutting of paving blocks into shape at the creosoting plant, resulted in charges which were unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and of section 10 of the federal control act. It is contended that just and reasonable carload rates would be the joint rates from the points of origin to the final destinations of the creosoted articles where the joint rates apply via

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Newark, and that where the joint rates do not apply through Newark the said joint rates plus charges ranging from 2.5 cents for 30 miles and under to 30 cents for 500 miles for out-of-line or back-haul movements would be just and reasonable. No objection is made to an additional transit charge similar to that charged its competitors. We are asked to prescribe just and reasonable rates for the future. Rates are stated herein in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The process of creosoting consists of steaming the wood in a retort or cylinder, removing the moisture, and running in the creosoting oil, a coal-tar product, under pressure for a number of hours, then removing the excess oil and putting the wood in a vacuum to clean it. Wood so treated is used quite extensively throughout the country, especially in the east, for railroad ties and telegraph cross arms, for paving streets, sidewalks, and factory floors, and in the construction of docks. The wood used for creosoting is largely long-leaf yellow pine originating in the south. While some other woods, such as spruce, originating in other sections of the country, will absorb the creosote, they curl and twist, and are therefore unsuitable for the purposes for which creosoted wood is principally used.

Complainant's plant is reached by the Pennsylvania Railroad and the Central Railroad of New Jersey, hereinafter referred to as the Pennsylvania and the Central. Newark is on the main line of the New York division of the Pennsylvania. Trains containing cars for complainant arriving at Newark over the Pennsylvania are broken up at Waverly, a large classification yard of the Pennsylvania in Newark, and the cars for complainant are then moved over the Passaic and Lister branches and over a track operated jointly by the Pennsylvania and the Central and known as the Manufacturers Extension Railroad to complainant's plant, approximately 5 miles from Waverly. Newark is not on the Central's main line to New York, but is on what are known as the Newark-Elizabeth and Newark-New York branches. The Central's trains containing cars for Newark leave the main line at Elizabethport, N. J., and move for 8 miles over the Newark-Elizabeth branch to Brills Junction, in Newark, where the cars are classified. They are then switched over the Manufacturers Extension branch to complainant's plant. Traffic for New York may move via the Central through Newark, the routing being unrestricted. As an operating matter it is not ordinarily handled through that point, but moves direct over the main line through Bayonne, N. J., to Jersey City, N. J. Traffic from the south and west does not move via the Central through Newark or Jersey City when destined to points on the New York, New Haven & Hartford Railroad, but is delivered to the Lehigh & Hudson River Railroad at

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Easton, Pa., for movement beyond in connection with the New York, New Haven & Hartford. This is due to the fact the latter carrier refuses to accept this traffic from the Central at Jersey City, although the Central naturally prefers the latter route because of the longer haul which it would receive. Traffic from the south and from St. Louis, Mo., and other Mississippi River crossings, when routed by way of the Pennsylvania to points in eastern New York and in New England, moves through Newark.

Complainant creosotes all of the lumber material which it receives. Much of this material has in the past reached Newark by water, in 1914 about 40 per cent being received in this way, of which approximately 75 per cent consisted of railroad ties. At the time of the hearing less freight was being received by water on account of the increase in ocean freight charges, although it is stated that ocean freight charges are lower than they were in 1917 and 1918. Complainant's plant is on the Passaic River and has ample dock facilities and a large steel lifting crane. As the depth of the water at the dock is only 4 feet at high tide, freight must be barged to the dock, a service which adds to the cost of transportation. An initial rail haul is also usually involved.

Complainant purchases railroad ties at points in Florida, such as Jacksonville, Fernandina, and Tampa; also at Mobile, Ala., and other southern points. Complainant's competitors are said to secure their ties from the same general territory, but complainant's witness was unable to name specific points. Most of the ties creosoted by complainant are the property of the railroads. As to the latter traffic complainant is not interested in the freight rate and frequently does not know where the ties originate. Paving stock is usually about 4 inches wide, 8 inches thick, and 5 to 10 inches long. It is cut largely from the waste of big timbers and is supplied principally by the larger mills. The stock is cut into paving blocks at the creosoting plants; hence any transit arrangement for creosoting wood paving blocks necessarily carries with it the sawing and dressing of the lumber at the transit point. All the creosoting plants are equipped to cut blocks. Lockhart, Ala., and Bogalusa, La., are the principal producing points for paving block material, although complainant purchases some at Century, Fla. Complainant's competitors also buy their stock at Lockhart and Bogalusa. Planks and timbers, also piling and telegraph cross arms, are creosoted by complainant, and these it purchases principally at mills in Georgia, Florida, and Alabama, although it has also received them from Delaware, Maryland, and Virginia.

Complainant located its plant at Newark in 1910. Its principal competitors, most of whom constructed their plants since that time, are located in central territory, at Madison, Ill., Indianapolis and

Bloomington, Ind., and Toledo, Ohio. There are other competitors at Broadford Junction, Pa., and Simpson, Miss. All of these operate under transit rules which give them the benefit of the joint rates where they apply through the creosoting point, and some of them under rules which also authorize the application of the joint rates, plus out-of-line or back-haul charges, the same or substantially the same in amount as those sought by complainant, where the joint rate is not applicable through the creosoting point. With the exception of Broadford Junction, which is not accorded the back-haul service, these plants are located on through routes to eastern consuming territory, and no back-haul movement is involved in shipments to that territory. Broadford Junction is not directly intermediate between the south and the consuming territory north and east of Newark, the creosoted product moving principally to points in western New York. No competitors are located upon the rails of the Pennsylvania or the Central. The creosoting-in-transit arrangement seems to be quite common except in trunk line territory.

There are creosoting plants other than that of complainant in trunk line territory, but complainant meets no competition of any consequence from these plants. This it ascribes partially to the fact that these plants do not have the transit arrangement, but chiefly to the fact that they do not seek to any great extent the business of the public, but confine their operations almost entirely to creosoting for railroads, telegraph companies, and electric-light companies. Many of these plants are said to be owned by the railroads and to have been operated at the time of the hearing by the United States Railroad Administration. Some of these eastern plants have refused business from the general public and turned inquiries over to the complainant. There are also some creosote dipping plants in New England, this process being principally used for shingles. Dipped lumber does not come into competition with complainant's product.

Competition is keen in the sale of creosoted wood products and especially so in the sale of wood paving blocks. Complainant sells its creosoted products on a margin of profit of about 5 per cent. It has lost many contracts on which it has bid at points in New England and in New York state, which its witness stated was because competitors having the transit arrangement were enabled to underbid it, due to the difference in freight rates. In other cases complainant has refrained from bidding, particularly in the territory lying between Newark and central territory because of its alleged disadvantage in the matter of freight rates. Although the demand for creosoted lumber has increased considerably within the past few years, complainant's commercial output, as distinguished from cre-

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soting done for railroads, has somewhat decreased. The majority of its sales have been at near-by points in New Jersey and New York. Although the capacity of complainant's plant is 1,800 30-ton cars a year, in 1918 it shipped out only about 700 or 750 cars, and approximately the same number in 1917. Of these, 400 cars in 1918 consisted of ties owned by the Pennsylvania. This inability to operate its plant to capacity it attributes entirely to lack of transit arrangements. The following rates, among others cited by complainant, illustrate the disadvantage to complainant by reason of the adjustment assailed. The rate from Meridian, Miss., and grouped points to Boston, Mass., on basis of which creosoting in transit is permitted at the central territory points, is 43 cents, whereas complainant pays a rate of 53.5 cents from the same points to Boston, 39 cents to Newark, and 14.5 cents beyond. The joint rate from Meridian to New York is 39 cents, while the combination on Newark is 47 cents, 39 cents to Newark and 8 cents beyond, resulting in a disadvantage to complainant, as compared with its central territory competitors of 8 cents. On shipments from Meridian to Portland, Me., complainant's central territory competitors have an advantage of 18.5 cents.

Much of defendants' testimony was directed toward showing the difficulty of policing a transit arrangement at complainant's plant. The year 1914, in which, as stated above, approximately 40 per cent of complainant's material was received by water, was said to be representative of any year prior to the world war. Defendants urge that while they would have a record of all material moving in by rail, they would have no record of the material arriving by water; that the lumber which arrives by water is not marked in any way to distinguish it from lumber arriving by rail; and that under such circumstances it would be impossible to preserve the identity of the inbound shipments of raw lumber material, and that no system of records would be adequate to prevent even unintentional substitution. The substitution at the transit point of one article for another, when not specifically authorized by the tariff, is unlawful and will subject the parties guilty thereof to criminal prosecution. *Fabrication-in-Transit Charges*, 29 I. C. C., 70; *National Casket Co. v. S. Ry. Co.*, 31 I. C. C., 678. Defendants serving central territory provide transit arrangements similar to those sought by complainant, and the tariff of one of the defendants, the New York Central Railroad, governing creosoting in transit at Toledo, a lake port, and at other points on its line west of Buffalo, N. Y., or Clearfield, Pa., makes specific provision for policing nontransit tonnage whether received or forwarded by rail, boat, wagon, or otherwise. Defendants assert, however, that there is no movement by water to the plant at Toledo or to the plant at Madison, a Mississippi River point.

Neither the Pennsylvania nor the Central allows creosoting in transit or sawing and dressing of lumber in transit at any point upon its line. However, the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad, a part of the Pennsylvania system, allows creosoting in transit at Indianapolis in accordance with its tariff I. C. C. No. 1414. Apparently there are no transit arrangements for creosoting of lumber on any of the lines in trunk line territory except at Broadford Junction on the Pittsburgh & Lake Erie Railroad. There are no transit arrangements for the dressing and sawing of lumber in that territory except on the Adirondack division of the New York Central Railroad, where such arrangements were authorized a few years ago when the government removed the duty from rough lumber in order to encourage competition with the Canadian mills. This is in the nature of a government arrangement for the purpose of encouraging manufacturing in the United States. Lumber dealers throughout the state of New York have requested that sawing and dressing in transit be permitted but the carriers have consistently refused.

Defendants urge that to uphold the contention of complainant that as a matter of reasonableness under section 1 of the act it is entitled to the establishment of the arrangement sought in this instance, would justify, if not require, the further extension of the arrangement to other creosoting plants throughout trunk line territory; and that the natural result would be that the lumber dealers in this territory would demand the granting of dressing and sawing in transit at their plants.

It is apparent that the question here presented is primarily one of alleged undue prejudice resulting from the granting of a creosoting-in-transit arrangement to complainant's competitors and the denial of a similar arrangement to complainant. The record establishes that on much traffic to points beyond Newark in eastern New York and in New England, which territory complainant asserts constitutes its natural market, it is unable, as to all-rail traffic at least, to meet the competition of creosoting plants in central territory by reason of the situation complained of. Complainant contends that so long as the Pennsylvania and the Central participate in joint rates under which the transit arrangement is allowed by the other lines they are necessarily chargeable with unjust discrimination and undue prejudice because they do not allow the arrangement at Newark on their own lines. On behalf of the Central and the Pennsylvania it is urged that they are not in anywise interested in or chargeable with the allowance of these transit arrangements by connecting lines. Those two carriers rely strongly upon *Grain & Hay Exchange v. P. Co.*, 32 I. C. C., 409, *Indianapolis Chamber of Commerce v. C., C., C. & 61 I. C. C.*

St. L. Ry., 34 I. C. C., 267, *Meridian Grain & Elevator Co. v. A. & V. Ry. Co.*, 38 I. C. C., 478, and other cases involving somewhat similar situations in which complaints alleging undue prejudice were dismissed. Those cases, however, were considered in *Southern Hardwood Traffic Assn. v. Director General*, 61 I. C. C., 132, decided this date, and found to be no longer controlling in view of the enlarged powers conferred upon us by the transportation act, 1920. In the case last cited we found that defendants' participation in tariffs carrying joint rates on lumber and forest products applying through Memphis, Tenn., or Louisville, Ky., and permitting in connection with such joint rates transit at certain points on the through routes, while contemporaneously denying similar transit at Louisville or Memphis, subjected the complainants therein to undue prejudice. The Central and the Pennsylvania, as well as other defendants herein, are parties to joint rates on creosoted lumber applying through Newark under which transit is permitted at competing plants on the through routes, but is denied to complainant at Newark, and thereby they become effective instruments of discrimination.

The fact, as shown by complainant, that transit arrangements are provided by defendants on other commodities which are not in any way competitive with creosoted lumber does not prove any unjust discrimination or undue prejudice against complainant. *Nashville Lumbermen's Club v. L. & N. R. R. Co.*, 40 I. C. C., 59.

Complainant's request for the establishment of back-haul charges where the joint rates do not apply through Newark is based upon the ground that the outbound rates from Newark on the creosoted products are unreasonable. Complainant relies mainly upon two exhibits, the first showing the divisions received by the lines north and east of Cairo, Ill., out of rates on lumber from points in the south and southwest to destinations in trunk line territory, which divisions for hauls of from 920 to 1,204 miles are said to be from 23.8 to 29.9 cents, the second being a comparison of the sixth-class rate of 18 cents applicable to wood paving blocks from Newark to a number of destinations in New York, including Albany, Rochester, Syracuse, and Utica, with commodity rates on the same product for hauls for similar distances from St. Louis, Madison, and Chicago, Ill., and Sandstone, Minn., to various destinations in Iowa, Missouri, Nebraska, and South Dakota. With reference to the first, it may be said that while divisions may be considered as evidence they are not conclusive and ordinarily do not afford a sound basis upon which to judge of the reasonableness of rates. The New York destinations shown in the second exhibit mentioned are at an average distance of 269 miles from Newark. The average haul to the western destinations is 296.5 miles and the average rate 11.67 cents. The distance
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rates of the Wabash Railroad applicable to the transportation of creosoted paving blocks from St. Louis to points in Missouri are also cited. While these comparisons indicate that the rates out of Newark to the particular destinations shown in the exhibits may be rather high, they are insufficient, standing alone, to support a finding and order for general application for the future.

Following *Southern Hardwood Traffic Asso. v. Director General*, *supra*, and upon the facts of record in this case, we find that the refusal of the Central and the Pennsylvania to establish creosoting-in-transit arrangements at Newark is not unreasonable, but that defendants, in so far as they respectively participate in tariffs carrying joint rates on lumber, piling, telegraph cross arms, railroad ties, and wooden paving blocks, applying through Newark from points in southern classification territory to points in northern New Jersey, eastern New York, and in New England, and permitting in connection with such joint rates creosoting in transit at Madison, Indianapolis, Bloomington, Toledo, or Simpson, while contemporaneously denying similar transit arrangements at Newark, subject complainant to undue prejudice and disadvantage.

An appropriate order will be entered requiring the removal of the undue prejudice.

HALL, *Commissioner*, dissenting:

This case is similar in principle to *Southern Hardwood Traffic Asso. v. Director General*, 61 I. C. C., 132, and most of what is said in my dissenting expression there is applicable here.

In central territory the carriers accord the transit; in trunk line territory they do not. The Pennsylvania Railroad and Central of New Jersey, which serve Newark, do not accord the transit at any point on their lines. Nevertheless, because they participate in joint rates with carriers which permit transit in central territory, they must, under the majority report, allow the transit at Newark or cancel their participation in the joint rates, although the circumstances and conditions at Newark affecting the desired transit are plainly different from those at points in central territory where transit is allowed, and although cancellation of the joint rate will not help Newark.

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No. 9355.

JOHN MORRELL & COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted December 31, 1919. Decided March 21, 1921.

Commodity rates charged on numerous carload shipments of packing-house products from Ottumwa, Iowa, to Memphis, Tenn., on and after November 17, 1913, higher than the contemporaneous fifth-class rates from and to the same points, found not unreasonable. Complaint dismissed.

Walter E. McCornack for complainant.

Kenneth F. Burgess for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

HALL, Commissioner:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant is a corporation engaged in the meat-packing business at Ottumwa, Iowa. By complaint filed November 25, 1916, it alleges that the joint commodity rate of 31 cents charged on numerous carload shipments of packing-house products from Ottumwa to Memphis, Tenn., on and after November 17, 1913, was unreasonable to the extent that it exceeded 25.5 cents. By supplemental complaint filed September 14, 1918, prior to the hearing, the Director General of Railroads was made a party defendant and the increased rate of 39 cents, effective June 25, 1918, was similarly assailed. Reparation is sought on all shipments that moved under those rates, a partial list of which was filed with us on November 13, 1915. At the hearing complainant conceded the propriety of the percentage increase applied under general order No. 28, of the Director General, and on shipments made on and after June 25, 1918, asks reparation to the basis of a rate of 82 cents. Rates are stated in cents per 100 pounds.

All of the shipments moved over the Chicago, Burlington & Quincy or Wabash to St. Louis, Mo., and the Terminal and Illinois Central beyond.

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Packing-house products generally are rated fifth class in western classification territory. From November 17, 1913, to June 25, 1918, the fifth-class rate from Ottumwa to Memphis over the routes of movement was 29 cents, minimum weight 26,000 pounds up to August 5, 1919, and 30,000 pounds thereafter. The minimum in connection with the commodity rate was 26,000 pounds until July 30, 1919, when it also was increased to 30,000 pounds. On June 25, 1918, the class rate was increased to 36.5 cents and the commodity rate to 39 cents. Effective March 6, 1919, the latter was reduced to the amount of the class rate, pursuant to the following provision of general order No. 28:

In applying the increases prescribed in this section the increased class rates applicable to like commodity descriptions and minimum weights between the same points are not to be exceeded, * * *.

Thereupon, it is testified, refund was made to complainant to the basis of 36.5 cents per 100 pounds on all shipments made on and after June 25, 1918, although the 39-cent commodity rate had been specifically published and was applicable.

Complainant rests its case principally upon the fact that the commodity rates exceeded the contemporaneous class rates, but asks for reparation to the basis of 25.5 cents, or 3.5 cents less than the class rate, on shipments made prior to June 25, 1918, and to the basis of 25.5 cents plus 25 per cent, or 32 cents, on shipments made thereafter. These bases rest upon the fact that the amount of increase sought by the carriers in *1915 Western Rate Advance Case*, 35 I. C. C., 497, 590, was generally 3.5 cents, this being the increase necessary in most cases to bring the commodity rates to the level of the fifth-class rates.

Complainant introduced several exhibits to show that, with but few exceptions, packing-house points throughout this territory enjoyed outbound commodity rates on these products which were less than the corresponding fifth-class rates. These exceptions were the Missouri River cities, which also paid more than the class rates up to the time of the final adjustment under general order No. 28. By one of the exhibits this relationship, as well as a comparison of commodity rates, on traffic to Memphis, is given as follows, the figures in the first column being the short-line distances, those in the second and fourth columns representing the rates in effect prior to June 25, 1918, and those in the third and fifth columns representing the subsequent rates:

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From—	Dis- tances.	Packing-house products rates.		Fifth-class rates.	
		Prior to June 25, 1918.	On and after June 25, 1918.	Prior to June 25, 1918.	On and after June 25, 1918.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Fort Worth, Tex.....	539	28	35	70	87.5
Oklahoma City, Okla.....	487	28	35	58	72.5
Wichita, Kans.....	566	29.5	37	55	69
Kansas City, Mo.....	484	28	{ 1 35 1 34 1 39 1 36.5 }	27	34
South Omaha, Nebr.....	684	31	{ 1 39 1 36.5 }	29	36.5
Sioux City, Iowa.....	777	31	39	50	62.5
St. Paul, Minn.....	887	31	39	51	64
Austin, Minn.....	792	31	39	51	64
Mason City, Iowa.....	762	31	39	50	62.5
Cedar Rapids, Iowa.....	632	31	39	59	49
Ottumwa, Iowa.....	566	31	{ 1 39 1 36.5 }	29	36.5
Chicago, Ill.....	827	27	34	37	46.5
St. Louis, Mo.....	311	21	24.5	30	37.5

¹ In effect from June 25, 1918, to February 19, 1919, inclusive.

² Effective February 20, 1919.

³ In effect from June 25, 1918, to March 5, 1919, inclusive.

⁴ Effective March 6, 1919.

In further support of the complaint *Oudaky Packing Co. v. A., T. & S. F. Ry.*, 32 I. C. C. 560, and *Eastern Live-Stock Case*, 36 I. C. C. 675, 704, are cited. In the former we condemned as unreasonable commodity rates on packing-house products from Wichita and Kansas City, Kans., St. Joseph, Mo., and South Omaha, Nebr., to Utah common points, originally equal to the corresponding class rates, but higher during the period in question by reason of the reduction of the class rates pursuant to our order in an earlier case, and awarded reparation. In that case the carriers admitted that the failure to reduce the commodity rates was anomalous, explaining that but for "tariff complications" they would have made them the same as the class rates. In the latter case we refused to approve rates on packing-house products in eastern territory which would exceed the existing fourth-class rates on such products, loose, and fifth-class rates, packed.

Defendants' witness traced the history of the rates in controversy back as far as 1891, pointing out that to Memphis the rates on packing-house products from Ottumwa and other packing centers in Iowa, as well as from Omaha, Kansas City, and other Missouri River points, were always made with relation to the rates from St. Louis, and not to the contemporaneous class rates. Thus, in 1891, the rate from Ottumwa was 28 cents, 10 cents over St. Louis, and from Chicago 24 cents. In 1908 the rates generally were increased 3 cents, those from Ottumwa, Oskaloosa, Iowa City, and Cedar Rapids, Iowa, remaining 10 cents over the St. Louis rate. From Des Moines and Marshalltown, Iowa, the rates were 10.5 cents, and from Boone, Iowa, 12 cents, over the St. Louis rate. From Omaha, Nebr., Council Bluffs,

Sioux City and certain other Iowa points, and St. Paul, Minn., the rates originally were 13 cents over St. Louis, but in 1900 those from Omaha, Council Bluffs, and intermediate points, and from St. Paul, were reduced 3 cents and in 1908 again increased 3 cents. It will be observed that for a period prior to 1900 the Omaha rate was 3 cents higher than the Ottumwa rate, but in that year these points were put on a parity.

It is testified that, with but few exceptions, Omaha and Ottumwa are grouped on class and commodity rates to Memphis; and it is emphasized that the general adjustment above outlined, the outgrowth of competitive conditions, has been long continued. Defendants also point out that a slightly more liberal carload mixture was available to Ottumwa under the commodity rate than under the class rate. They cite *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, in which the scale prescribed for packing-house products in southwestern territory provided a rate of 50 cents for a haul of 600 miles, with an allowance of 2.5 cents additional for two-line hauls. The movement from Ottumwa to Memphis is over two lines in each instance. They also cite certain of our decisions to the effect that long-standing adjustments afford some presumption of reasonableness, and *Chamber of Commerce, Houston, Tex.*, v. *I. & G. N. Ry. Co.*, 32 I. C. C., 247, and *Sulphuric Acid from New Orleans, La.*, 42 I. C. C., 200, in which it was said that commodity rates are not unreasonable merely because they exceed the class rates.

The 31-cent rate from Ottumwa to Memphis yielded 10.95 mills per ton-mile; the 39-cent rate 13.78 mills. For western classification territory and the service accorded such commodities these earnings do not appear to have been too high. The Ottumwa-Memphis class rates, with which comparison is made, are shown by the preceding table to have been and to be on a materially lower level than those from the contrasted points; and it may be observed that for the Ottumwa-Memphis distance a fifth-class rate constructed on the scale prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, 345, would have been at least 54 cents prior to June 25, 1918, and 53.5 cents on the scale in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, 261. While the 31-cent rate was higher, distances considered and grouping disregarded, than certain of the comparative commodity rates shown in the same table, it compared favorably with others. The 39-cent rate appears to be fairly related to many of the commodity rates referred to by complainant in its exhibits.

In *Rath Packing Co. v. I. C. R. R. Co.*, 56 I. C. C., 303; *Same v. Director General*, 59 I. C. C., 427, we found that commodity rates on packing-house products from Waterloo, Iowa, to Minneapolis and St. Paul, Minn., were unreasonable to the extent that they exceeded

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the contemporaneous fifth-class rates. In our report upon reargument we expressly stated at page 429:

The expression in the original report to the effect that commodity rates on products in excess of fifth class are unreasonable should not be wrested from its context, but should be understood as applying only to the particular rates under attack and not as establishing a general rule.

It is also to be noted that the rate found reasonable in the case cited yielded ton-mile and car-mile earnings considerably in excess of those which in this case it is proposed to condemn as unreasonable. This difference is not wholly accounted for by the difference in mileage.

We find that the rates assailed were not and are not unreasonable. The complaint will be dismissed.

EASTMAN, *Commissioner*, dissenting:

The evidence is, I think, sufficient to justify a conclusion that the rates assailed were unreasonable. In *Rath Packing Co. v. Director General*, 56 I. C. C., 303; 59 I. C. C., 427, we found that the commodity rates on packing-house products from Waterloo, Iowa, to Minneapolis and St. Paul, Minn., were unreasonable to the extent that they exceeded the contemporaneous fifth-class rates, although these fifth-class rates were "relatively low." This finding was in consonance, we said, with carrier practice generally and with prior decisions of the Commission. Doubtless there may be cases where the fifth-class rate could not properly be used as a measure of the reasonableness of the rates on packing-house products; but in the case before us it appears, not only that the rate in question was subsequently reduced to the fifth-class basis, but also that after it was reduced it was and is in harmony with the general level of rates on packing-house products from other producing points to Memphis.

In the following table are shown the rates to Memphis on packing-house products in effect at the time of the hearing from the various producing points, graded according to distance with the ton-mile earnings:

From—	Dis- tances.	Rates.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
St. Louis, Mo.	311	26.5	17
Kansas City, Mo.	484	34	14
Oklahoma City, Okla.	487	35	14
Chicago, Ill.	527	34	12.9
Fort Worth, Tex.	539	35	13
Wichita, Kans.	565	37	13
Ottumwa, Iowa.	566	36.5	12.9
Cedar Rapids, Iowa.	632	39	12
South Omaha, Nebr.	684	36.5	10.7
Mason City, Iowa.	752	39	10.4
Sioux City, Iowa.	777	39	10
Austin, Minn.	792	39	9.9
St. Paul, Minn.	887	39	8.8

From this table it appears that the rate from Ottumwa, after the reduction to the fifth-class basis, was not and is not relatively low as compared with the rates from the other points, two of which are in southwestern territory. Nor was evidence offered by defendants that the general level of rates on this traffic from points of production to Memphis is subnormal.

In view, therefore, of the excess over the fifth-class basis, the subsequent reduction to this basis, and the evidence with respect to the level of the corresponding rates from other producing points, it seems to me that the rates assailed have been shown to be unreasonable.

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INVESTIGATION AND SUSPENSION DOCKET No. 1251.

FUEL WOOD, PULP WOOD, AND WOOD BOLTS BETWEEN
NORTH PACIFIC COAST POINTS.

Submitted February 23, 1921. Decided March 26, 1921.

Proposed increased rates on fuel wood, pulp wood, and wood bolts, in carloads, between points in Idaho, Oregon, and Washington, found not justified for application on interstate traffic. Suspended schedules ordered canceled. Reasonable and nonprejudicial rates prescribed.

F. M. Dudley, A. J. Laughon, and Thomas Balmer for respondents.
R. W. Clifford and *O. O. Calderhead* for Public Service Commission of Washington and Public Utilities Commission of Idaho; and *Hal F. Wiggins* for Public Service Commission of Oregon.

William C. McCulloch and *Rogers MacVeagh* for West Coast Lumbermen's Association and Portland Traffic & Transportation Association; *R. J. Knott* for Western Pine Manufacturers' Association; *G. E. Carlson* for Bridal Veil Lumber Company and Wind River Lumber Company; *J. B. Campbell, Roy R. Brown, R. J. Knott,* and *A. F. Horton* for Spokane Merchants' Association, Spokane Chamber of Commerce, Western Retail Lumbermen's Association, Spokane Fuel Dealers' Credit Association, and Newport Commercial Club; *F. G. Donaldson* for Willamette Valley Lumbermen's Association; *J. H. Lothrop* for Portland Traffic & Transportation Association and Portland Chamber of Commerce; *J. W. McCune* and *H. O. Berger* for Traffic Bureau, Tacoma Chamber of Commerce; and *S. J. Wettrick* and *J. D. Mansfield* for Seattle Chamber of Commerce and Seattle Commercial Club.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to become effective December 1, 1920, respondents propose to establish in one tariff certain specific and distance rates for general application on interstate and intrastate shipments of fuel wood, pulp wood, and wood bolts, in carloads, throughout the states of Washington, Oregon, and Idaho, in lieu of the rates now published in some 25 separate tariffs. Rates to and from British Columbia are 61 I. C. C.

also included, but substantially no evidence as to these was introduced. Upon protest of the Public Service Commission of Washington, the Western Pine Manufacturers' Association, and the Western Retail Lumbermen's Association, we suspended the operation of the proposed schedules on interstate traffic until March 31, 1921, and subsequently suspended their operation until April 30, 1921.

Similar action was taken by the Washington commission and by the Public Service Commission of Oregon and the Public Utilities Commission of Idaho with respect to the operation of such schedules on intrastate traffic. At the request of the Washington commission a joint hearing with that commission was had in January, 1921, at which evidence was received concerning both state and interstate traffic. That portion of the state of Washington lying west of the Cascade Mountains will be referred to as western Washington; the remainder of the state as eastern Washington, and the territory in Oregon, Idaho, and eastern Washington will be referred to as the eastern district.

Fuel wood is a low-grade commodity which is burned as refuse by the lumber mills when it can not be marketed. Generally speaking, it includes mill wood, which is a by-product of sawmills; slab wood, which is the refuse of logs manufactured into lumber; and cordwood, which is a forest product slightly more valuable than slab wood. Pulp wood is used in the manufacture of paper. Very little moves interstate in the northwest. There is perhaps no interstate movement of wood bolts. Equipment not suitable for other commodities can be used for the transportation of such wood, and claims for loss and damage are infrequent.

Three scales of rates are now applicable to this traffic in the northwest, the so-called western scale applying intrastate in western Washington; a scale initiated by the Director General of Railroads and increased 25 per cent applying intrastate in Oregon; and the so-called eastern scale applying interstate in the eastern district, and intrastate in eastern Washington, between eastern and western Washington, and between points in Idaho on the Northern Pacific and Chicago, Milwaukee & St. Paul. Two distance scales are proposed by the carriers. It is proposed (1) to extend the application of the eastern scale generally to interstate and intrastate traffic in Washington, Oregon, and Idaho, with the exception of intrastate traffic in Oregon; and (2) to apply the so-called Southern Pacific scale, hereinafter described, on intrastate traffic in Oregon. Since the hearing, by order of March 1, 1921, the Oregon commission has prescribed an intrastate scale to become effective in that state March 31, 1921. The latter will be referred to as the Oregon scale. The following table shows rates for representative distances under each

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of the above distance scales. Rates are stated in cents per cord of 128 cubic feet.

Table showing rates for representative distances under present and proposed distance scales.

Distances.	Eastern scale (present and proposed).	Western scale (present).	Oregon intrastate scale initiated by Director General plus 25 per cent (present).	Southern Pacific scale (proposed).	Oregon commission scale (prescribed).
	Cents.	Cents.	Cents.	Cents.	Cents.
Not over 10 miles.....	125	86.5	112.5	112.5	95
Not over 15 miles.....	156.5	94	112.5	117.5	100
Not over 20 miles.....	166.5	102	112.5	125	105
Not over 25 miles.....	172	109.5	137.5	137.5	110
Not over 30 miles.....	172	117.5	137.5	140.5	115
Not over 40 miles.....	187.5	125	150	156.5	130
Not over 50 miles.....	195.5	133	150	172	150
Not over 60 miles.....	203	140.5	175	187.5	160
Not over 70 miles.....	211.5	149	175	203	170
Not over 75 miles.....	219	156.5	175	219	180
Not over 80 miles.....	219	156.5	200	219	180
Not over 90 miles.....	227	164.5	200	234.5	190
Not over 100 miles.....	234.5	172	200	250	200
Not over 110 miles.....	250	180	225	274	210
Not over 120 miles.....	250	187.5	225	274	220
Not over 125 miles.....	265.5	195.5	225	297	220
Not over 130 miles.....	265.5	195.5	237.5	297	220
Not over 140 miles.....	265.5	203	237.5	297	230
Not over 150 miles.....	281.5	211.5	237.5	320.5	240
Not over 160 miles.....	281.5	219	287.5	320.5	240
Not over 170 miles.....	297	227	287.5	344	250
Not over 180 miles.....	297	234.5	287.5	344	260
Not over 190 miles.....	312.5	242.5	287.5	367.5	260
Not over 200 miles.....	312.5	250	287.5	367.5	270
Not over 210 miles.....	344	258	325	390.5	285
Not over 220 miles.....	344	265.5	325	390.5	285
Not over 230 miles.....	375	274	325	414.5	300
Not over 240 miles.....	375	281.5	325	414.5	300
Not over 250 miles.....	406.5	289.5	325	414.5	300
Not over 260 miles.....	406.5	297	375	437.5	325
Not over 270 miles.....	437.5	305	375	437.5	325
Not over 280 miles.....	437.5	312.5	375	461.5	360
Not over 290 miles.....	469	320.5	375	461.5	360
Not over 300 miles.....	469	328	375	461.5	360
Not over 310 miles.....	500	336.5	.....	484.5	375
Not over 320 miles.....	500	344	.....	481.5	375
Not over 340 miles.....	531.5	.....	.....	508	400
Not over 360 miles.....	562.5	.....	.....	531.5	425
Not over 380 miles.....	594	.....	.....	.....	450
Not over 400 miles.....	625	.....	.....	.....	.....
Not over 420 miles.....	656.5	.....	.....	.....	.....
Not over 440 miles.....	687.5	.....	.....	.....	.....
Not over 460 miles.....	719	.....	.....	.....	.....
Not over 480 miles.....	750	.....	.....	.....	.....
Not over 500 miles.....	781.5	.....	.....	.....	.....

The eastern scale provides the highest rates now in effect. The bulk of the traffic in the eastern district moves at specific rates much lower than the scale. The western scale is obviously low. The increases in that scale proposed by the carriers range from 25 per cent to as high as 66 per cent. The Southern Pacific scale is lower than the eastern scale for distances of 70 miles and less. The greater portion of the traffic moves for such distances. The Oregon scale apparently would deprive the carriers of a portion of the increased revenue granted them following our decision in *Increased Rates, 1920*,

58 I. C. C., 220. The scale initiated by the Director General, unlike the eastern scale, is low enough to obviate the necessity of publishing numerous specific rates for application as exceptions thereto; and, unlike the western scale, is not seriously objectionable to the carriers from a revenue standpoint.

The eastern scale and the specific rates applying as exceptions thereto were voluntarily established by the carriers. Respondents propose to cancel all specific rates which are lower than the eastern scale, and to retain those rates which are higher. They contend that the low specific rates were originally published to enable sawmills to dispose of certain woods which theretofore had been burned as refuse, and to develop traffic in competition with teamsters who delivered cordwood direct to the purchaser. The western scale was prescribed by the Washington commission in 1909. The Great Northern was not a party to the order, and did not apply the scale generally. It now applies the western scale south of Seattle and the eastern scale north of that city. The scale initiated by the Director General was established April 29, 1919. It was the intention at that time to provide uniform rates for application throughout the northwest, but the plan was not carried into effect. Most of the fuel wood in Oregon had previously moved at specific rates which were lower than the scale initiated by the Director General, so that the adoption of that scale resulted in advances. The rates were further increased 25 per cent after our decision in *Increased Rates, 1920, supra*. Thereafter, on August 31, 1920, following an order of the Oregon commission directing the removal of discrimination, the Southern Pacific, not a party to this proceeding, again increased its rates on fuel wood to the pulpwood basis. The rates thus increased are those now proposed by the carriers in the Southern Pacific scale.

Respondents assert that their primary object is to secure a uniform and nonprejudicial basis of rates for general application on like commodities throughout the states of Washington, Oregon, and Idaho. No differences in transportation conditions warrant the present differences in rates. There should be greater uniformity in rate making in this territory to eliminate discriminations and inequalities; but such uniformity need not necessarily be accomplished by such extensive rate increases as respondents propose. They contend that the specific rates in the eastern district and the distance rates in western Washington are discriminatory; also that these rates are unreasonably low and should be increased to furnish necessary additional revenue. The rates on fuel wood are lower than the rates on all other commodities except logs. The rates proposed by respondents are somewhat lower than the rates in Wyoming, Nebraska, Colorado, and Utah, but the movement in Wyoming and Nebraska, and

possibly Colorado, is comparatively light. The comparatively greater density of population west of the Cascade Mountains is to be borne in mind. The proposed rates might adversely affect the volume of traffic. There has been a heavy movement under the eastern scale, but the movement at rates substantially lower than that scale has been much larger. The increase in value of fuel wood from 1915 to 1920 was greater than the increase in freight rates, but the cost of producing fuel wood, including the cost of logs and of labor, increased also. Coal has been cheaper than wood at certain times, considered from the standpoint of heat units. There is competition between these commodities, especially in western Washington, where coal is mined in the Puget Sound region.

The rates proposed by respondents would not bring about the uniformity contemplated. One scale would apply interstate and a different scale would apply intrastate in Oregon, and numerous specific rates higher than the interstate scale would apply as exceptions thereto. A reasonable and nondiscriminatory basis of rates for general application throughout these northwestern states is desirable, and the necessity for consistency and equality is recognized in the various proposals brought forward in this proceeding. As authorized by section 13, paragraph (3), of the interstate commerce act, we have conferred with the Public Service Commission of Washington, now the Department of Public Works, and with the Public Utilities Commission of Idaho as to the basis of rates to be prescribed. The following scale of distance rates has been submitted to those commissions for their comment and is agreeable to them:

Distances.	Rates per cord of 128 cubic feet.	Distances.	Rates per cord of 128 cubic feet.
	<i>Cents.</i>		<i>Cents.</i>
Not over 10 miles.....	116	Not over 210 miles.....	312.5
Not over 20 miles.....	126	Not over 220 miles.....	320
Not over 30 miles.....	136	Not over 230 miles.....	327.5
Not over 40 miles.....	146	Not over 240 miles.....	335
Not over 50 miles.....	156	Not over 250 miles.....	342.5
Not over 60 miles.....	166	Not over 260 miles.....	350
Not over 70 miles.....	176	Not over 270 miles.....	357.5
Not over 80 miles.....	186	Not over 280 miles.....	365
Not over 90 miles.....	196	Not over 290 miles.....	372.5
Not over 100 miles.....	206	Not over 300 miles.....	380
Not over 110 miles.....	216	Not over 320 miles.....	390
Not over 120 miles.....	226	Not over 340 miles.....	400
Not over 130 miles.....	236	Not over 360 miles.....	410
Not over 140 miles.....	246	Not over 380 miles.....	420
Not over 150 miles.....	256	Not over 400 miles.....	430
Not over 160 miles.....	266	Not over 420 miles.....	440
Not over 170 miles.....	276	Not over 440 miles.....	450
Not over 180 miles.....	286	Not over 460 miles.....	460
Not over 190 miles.....	296	Not over 480 miles.....	470
Not over 200 miles.....	306	Not over 500 miles.....	480

Upon a consideration of the facts of record, we are of opinion and find that the proposed increased rates in the schedules under sus-
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pension have not been justified. We further find that the rates named in the foregoing table for the respective distances will be reasonable and just for interstate application on respondents' lines in and between the states of Washington, Oregon, and Idaho.

An appropriate order will be entered requiring the cancellation of the schedules under suspension and the establishment of the rates herein found reasonable and just.

No. 11451.

GOODMAN DRILLING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, FORT WORTH &
DENVER CITY RAILWAY COMPANY, ET AL.

Submitted November 3, 1920. Decided March 3, 1921.

1. Rates on oil-well outfits and supplies, in carloads, from Burkburnett, Tex., to Mansfield and Gahagan, La., and on wrought-iron pipe in carloads, from Wichita Falls, Tex., to Gahagan, found unreasonable. Rates for the future prescribed, and reparation awarded.
2. Rates on boilers and electric generators, in less than carloads, from Burkburnett to Gahagan, and on swivels, wire rope, and pipe fittings, in less than carloads, from Wichita Falls to Gahagan found not unreasonable.

L. F. Daspit for complainant.

Robert Thompson, L. M. Hogsett, and George Thompson for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, Abe Goodman, trading under the name of the Goodman Drilling Company, alleges that the rates charged on oil-well outfits and supplies and wrought-iron pipe, in carloads, and on boilers, electric generators, swivels, wire rope, and pipe fittings, in less than carloads, shipped in November, 1919, from Burkburnett and Wichita Falls, Tex., to Mansfield and Gahagan, La., were unjust, unreasonable, and unduly prejudicial. We are asked to award reparation and to establish reasonable rates for the future. Rates will be stated in amounts per 100 pounds.

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The shipments from Burkburnett consisted of five carloads of oil-well outfits and supplies, three of which, aggregating 185,000 pounds, were to Mansfield, and two, which appear to have aggregated 173,700 pounds, to Gahagan. Charges were collected at the applicable class-A rates of 80 cents to Mansfield and 90 cents to Gahagan, except that one shipment to Mansfield was undercharged 40 cents. Electric generators and extra boilers were shipped in the same cars, and on these the applicable less-than-carload first-class rates of \$1.375 to Mansfield and \$1.715 to Gahagan were collected. The less-than-carload shipments to Mansfield weighed 20,100 pounds, and those to Gahagan 18,600 pounds. A reconsigning charge of \$5 per car was assessed on some of the cars, but that is not in issue.

The carload of wrought-iron pipe shipped from Wichita Falls to Gahagan weighed 54,000 pounds; 2,250 pounds of wire rope, 1,000 pounds of swivels, and 150 pounds of pipe fittings were loaded in the same car. Charges were collected at the applicable fifth-class carload rate of 86.5 cents on the pipe, fourth-class rate of \$1.09 on the wire rope, and first-class rate of \$1.715 on the swivels and fittings.

At the hearing some inconclusive evidence was offered to show that the weights on which the charges were assessed were erroneous, but in the complaint it is not specifically alleged that the charges collected were based on erroneous weights. In his exceptions complainant declares that defendants have admitted since the hearing that the weight of one shipment to Gahagan from Burkburnett was 64,200 pounds instead of 122,500. We can not verify this from the record, but if charges have been collected on the basis of an erroneous weight defendants should promptly refund the overcharge.

The shipments from Burkburnett to Mansfield moved over the Missouri, Kansas & Texas to Shreveport, La., the Kansas City Southern and the line of the Mansfield Railway & Transportation Company, 396 miles. Those from Burkburnett to Gahagan moved over the same route to Shreveport and the Texas & Pacific beyond, 407 miles. The shipment from Wichita Falls to Gahagan moved over the Missouri, Kansas & Texas to Henrietta, Fort Worth & Denver City to Fort Worth, and Texas & Pacific, 378 miles.

Burkburnett and Wichita Falls are located in Texas common-point territory toward its northwestern boundary. Between these points and Shreveport rates on a distance basis were prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312. In order to avoid fourth section violations the Shreveport rates have been published to apply between Texas common-point territory and certain Louisiana points located in a narrow strip bounded on the west by the Louisiana-Texas state line and on the east by a line extending from the Arkansas-Texas state line at Texarkana in a southeasterly direction to Shreveport, and thence south-

west to the Sabine River at Logansport, La. Points in Louisiana east of this line are in what is known as New Orleans territory and, generally speaking, take New Orleans rates on traffic to and from Texas. Mansfield is 31 miles south of Shreveport on the Kansas City Southern and the line of the Mansfield Railway & Transportation Company. Gahagan is 42 miles southeast of Shreveport on the Texas & Pacific. Both of these points are in New Orleans territory, and the rates charged on the shipments to Gahagan were the New Orleans rates. To Mansfield a lower scale of class rates applies from certain Texas common points, including Burkburnett and Wichita Falls.

When the shipments moved carload commodity rates of 55 cents on oil-well outfits and supplies and 30 cents on wrought-iron pipe were in effect from Burkburnett and Wichita Falls to Shreveport. These rates also applied to Vivian, Gilliam, Keithville, and Logansport, La., located in the strip of territory above mentioned taking Shreveport rates. Complainant's claim for reparation is based on these rates as to the portions of the shipments entitled to carload rates. As to the portions taking less-than-carload rates no claim is made on the shipments to Mansfield, but on the shipments to Gahagan we are asked to award reparation to the basis of the Mansfield rates.

Complainant compares the carload rates assailed with rates on oil-well supplies, in carloads, from New Orleans to Beaumont, Tex., 298 miles, 39 cents, and from Oklahoma City, Okla., to Mansfield, 453 miles, and to Gahagan, 461 miles, 66.5 cents; also with rates on wrought-iron pipe, in carloads, from New Orleans to Houston, Tex., 382 miles, 24 cents, and from Pittsburgh, Pa., to Gahagan, 1,221 miles, 74 cents.

Complainant also calls attention to the fact that in *Thompson, Ritchie & Co. v. V., S. & P. Ry. Co.*, 39 I. C. C., 287, we prescribed the then existing Shreveport scale for application between Texas points and Ruston, La., a point 66.3 miles east of Shreveport on the Vicksburg, Shreveport & Pacific. Other cases are cited by complainant wherein we have extended the application of the Shreveport scale.

For defendants it is contended that no justification exists for the application of the Shreveport scale to the points here under consideration. They point out that, with reference to Texas traffic, Mansfield and Gahagan are in one established rate group and Shreveport in another; and that under any blanket system of rates abrupt rate differences are likely to exist between points near to each other but in different rate groups. They urge that if the Shreveport rates were extended to these points in New Orleans territory it would tend to disturb the entire rate structure, and that this record is insuffi-

cient to warrant a change of that character. They also contend that the facts in the Ruston case are different in that Ruston is a large wholesale center and a jobbing competitor of Shreveport, whereas neither Mansfield nor Gahagan is of commercial importance.

Contemporaneously there were in effect from New Orleans, La., and points in New Orleans territory, including Mansfield and Gahagan, to Burkburnett and Wichita Falls, carload commodity rates of 72.5 cents on oil-well supplies, and 42.5 cents on wrought-iron pipe.

Mansfield and Gahagan are near the western boundary of New Orleans territory, and although the distances to these points from Burkburnett and Wichita Falls are not greatly in excess of one-half the distance from the latter points to New Orleans proper, this is but an incident of the group system of rate making. Generally speaking, group rates are made with reference to the average distance to all points within the group. As was said in *Clyde Coal Co. v. P. R. R. Co.*, 23 I. C. C., 135:

All grouping for rate purposes is necessarily more or less arbitrary. Group lines generally have the appearance of injustice to some point just across the line. Yet the line must be drawn somewhere or the grouping abandoned. Once established, groups should not be lightly or unnecessarily disturbed.

While denying that the rates charged were unreasonable, defendants contend that rates for the future should not in any event be less than the westbound commodity rates above mentioned. They assert that the northbound and eastbound rates in this territory, on account of lighter traffic, are normally higher than the southbound and westbound rates. They point to the differentials of 4 cents on oil-well outfits and 6 cents on pipe between the northbound and southbound rates in Kansas City territory, and express the belief that eastbound commodity rates less than 4 cents higher on oil-well supplies, and 6 cents higher on pipe, than the westbound rates have not been justified.

The average ton-mile earnings on the oil-well outfits and supplies, and on the pipe, under the rates charged were 4.1 and 4.57 cents, respectively; under the westbound New Orleans group rates of 72.5 cents on oil-well outfits and supplies and 42.5 cents on pipe they would be 3.6 and 2.36 cents, respectively; and under the Shreveport rates sought, 2.73 and 1.58 cents, respectively.

With respect to the portions of these shipments moving at carload rates we find that the rates charged were unreasonable to the extent that they exceeded 72.5 cents on the oil-well outfits and supplies, and 42.5 cents on the pipe; that for the future the rate on oil-well outfits and supplies, in carloads, from Burkburnett to Mansfield and Gahagan, and on wrought-iron pipe, in carloads, from Wichita Falls to Gahagan, should not exceed 72.5 and 42.5 cents, respectively, subject to the increases authorized in *Increased Rates*, 61 I. C. C.

1920, 58 I. C. C., 220; that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable in the past; and that he is entitled to reparation, with interest. In view of the question raised as to the correct weight of one of the shipments complainant should comply with rule V of the Rules and Practice. The collection of the undercharge mentioned may be waived.

While no satisfactory explanation appears for the existing spread in less-than-carload class rates between Mansfield and Gahagan, a reasonable relationship of those rates can not be determined upon this record. We find that the less-than-carload rates charged on the shipments to Gahagan were not unreasonable.

An order for the future will be entered.

EASTMAN, *Commissioner*, dissenting:

As the majority point out, the distances to Mansfield and Gahagan from Burkburnett and Wichita Falls are not greatly in excess of one-half of the corresponding distances from the latter points to New Orleans. On the other hand, both Mansfield and Gahagan are near Shreveport. I am not persuaded that there is sound reason for including these points in a group with New Orleans or for withholding from them the distance rates which near-by Shreveport enjoys and which have met with our approval.

61 I. C. C.

No. 11209.

PEERLESS PORTLAND CEMENT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND MICHIGAN
CENTRAL RAILROAD COMPANY.

Submitted March 18, 1921. Decided March 21, 1921.

Rate of \$15 per car for intrastate transportation of wet marl, in carloads, from Spring Arbor to Union City, Mich., during federal control, found unreasonable to the extent that it exceeded \$7.50 per car. Reparation awarded.

John C. Graham and William M. Hatch for complainant.

John F. Finerty, Royal McKenna, and Fred W. Heid for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Defendants filed exceptions to the report proposed by the examiner.

Complainant, a corporation, manufactures cement at Union City, Mich. By complaint filed January 20, 1920, as amended, it alleges that the rate of \$15 per car assessed on and after June 25, 1918, for the intrastate transportation of wet marl, in carloads, from Spring Arbor, Mich., to Union City, was unreasonable in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. Reparation only is sought.

Spring Arbor and Union City are local points on the Air Line division of the Michigan Central between Jackson and Niles, Mich., 11 and 43 miles, respectively, west of Jackson. Shipments average about 15 cars daily, including Sundays, while complainant's cement plant is in operation. In lots of this number the loaded cars are hauled to Union City and the empties returned to Spring Arbor in a train which the Michigan Central provides especially therefor, but which also hauls shipments of coal for complainant, empty box cars for cement shipments, and such other carload freight as may be offered for shipment between Jackson and Union City. The train makes one round trip daily. Thirty-six open-top hopper-bottom cars owned by complainant, of capacity between 35 and 40 tons, are used in the transportation of the wet marl. The loaded and empty cars are handled in a single string by the Michigan Cen-

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tral from and to sidings at Spring Arbor and Union City. Complainant performs the switching between those sidings and points of loading and unloading.

No claims for damage have ever been filed. Defendants' incidental accounting work is made comparatively simple, in that one freight bill is issued for the aggregate of several days' shipments, instead of a separate bill for each carload.

The shipments on which reparation is sought moved between June 25, 1918, and February 29, 1920, both inclusive. During the winter months the cement plant was closed and no shipments moved. The applicable rate was \$15 per car, the minimum for a carload line haul established June 25, 1918, under general order No. 28 of the Director General of Railroads. Charges for a time on and after that date were erroneously collected at a lower figure, the exact basis for which is not disclosed. Defendants presented bills for undercharges which complainant refused to pay, and proceedings in court for their recovery have been instituted. Since March, 1919, charges have been collected on the basis of \$15 per car.

Wet marl is a carbonate of lime, in the form of mud, which complainant obtains by dredging and uses in the manufacture of cement.

About 1901 the supply of wet marl adjacent to the cement plant of complainant at Union City became practically exhausted, and complainant purchased several hundred acres of marl deposits at Spring Arbor. Preliminary to the purchase it conferred with the Michigan Central relative to the matter of transportation and rates, with the result that an arrangement was made whereby the former agreed to furnish all cars for transporting the marl, while the latter agreed to construct and maintain all plant tracks for complainant and to establish a rate of \$5 per car. Complainant thereupon purchased the property and equipped it with the necessary docks, boats, dredges, locomotives, etc. Some five years ago the Michigan Central declined to make further additions to or longer to maintain complainant's plant tracks, and since that time the performance of this part of the original agreement has been assumed by complainant. On October 26, 1914, the rate was increased by 5 per cent to \$5.25 per car; and on May 2, 1918, the aggregate was increased by 15 per cent to \$6.04 per car. Effective June 25, 1918, the \$15 rate was established. Complainant protested against the latter, but without effect.

Since the termination of federal control the Public Utilities Commission of Michigan, upon petition of complainant and after hearing, has found the \$15 rate unreasonable to the extent that it exceeded \$7.50 during the period from March 1 to August 25, 1920, inclusive, and thereafter to the extent that it might exceed \$10.50 per car. The latter rate became effective September 1, 1920, in compliance with

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the Michigan commission's order, and is the equivalent of \$7.50 increased by 40 per cent, the increase authorized by us on interstate traffic in the eastern group in *Increased Rates, 1920*, 58 I. C. C., 220. The Michigan commission subsequently filed an application with us asking approval, under section 208 of the transportation act, 1920, of its orders awarding reparation during the period from March 1 to September 1, 1920, in the amount of the difference between \$15 per car and the rates found reasonable.

Complainant does not contend that by reason of the agreement hereinbefore described defendants were estopped from increasing the rate originally established. Its position is that an increase of more than 25 per cent in the rate in effect June 24, 1918, was unjust and unreasonable. It calls attention to the fact that a number of commodities of a greater commercial value than wet marl, including sand, gravel, slag, and stone, were excepted from the application of the minimum carload rate. The rates on the commodities named were increased 1 cent per 100 pounds.

For defendants it is contended that the rate in effect prior to June 25, 1918, was unduly low and that the rate of \$15 per car was not unreasonable. They undertake to support this contention by exhibits showing, for comparable distances, rates on marl and clay from and to other points in Michigan and on a number of other low-grade commodities from and to points in central territory and in trunk line territory, which result in carload rates either as high as, or in most instances higher than, the rate assailed. But the circumstances and conditions surrounding the transportation of traffic under those rates are not disclosed. A witness for defendants was of opinion that if there was any movement thereunder it would be in carriers' cars and that terminal services in connection therewith would be performed by the carriers.

The principal reasons advanced by defendants for the establishment of the \$15 minimum carload rate are that a great many charges for short hauls, particularly of low-grade materials, were insufficient to pay even the operating costs; and that the shortest line haul usually involves the furnishing of equipment, terminal service at points of origin and destination, and other expenses incidental to long hauls except those attached to the additional road-haul service. They assert that it was understood and intended that the carload minimum rate would have the effect of increasing the rate for many short hauls in greater proportion than for hauls on traffic generally, and that it was not until some time after this and other specific increases were decided upon that it was concluded to apply a 25 per cent increase to rates on traffic generally. They maintain that the circumstances under which the rate of \$5 was originally established

indicate that the elements of cost of service and reasonable return on the investment were not considered by the Michigan Central, but rather that the purpose was to afford complainant a rate which would enable it to continue to operate its cement plant. No evidence was offered as to cost of the service.

As before stated, complainant performed practically all the terminal service in connection with, and furnished all cars for, the transportation of these shipments; and for the past five years it has also borne the cost of maintaining the plant tracks which the Michigan Central had originally assumed. Both the loaded and empty cars were hauled by the Michigan Central substantially in train lots. Under the circumstances the rate assailed, which yielded 46.9 cents per car-mile, was excessive.

We find that the rate applicable on these shipments was unreasonable to the extent that it exceeded \$7.50 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby, and is entitled to reparation in the amount of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable, with interest. Complainant should comply with rule V of the Rules of Practice. Collection of outstanding undercharges may be waived.

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No. 10813.

PENICK & FORD, LIMITED,

v.

DIRECTOR GENERAL, TEXAS & PACIFIC RAILWAY
COMPANY, ET AL.

Submitted March 11, 1920. Decided March 26, 1921.

Practices of the Director General and of the trunk line and terminal carriers of assessing demurrage at complainant's plant at Harvey, La., under three separate average agreements, found not to have resulted in unreasonable or otherwise unlawful demurrage charges.

Nuel D. Belnap, John S. Burchmore, and Luther M. Walter for complainant.

Henry G. Herbel and James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

AITCHISON, *Commissioner*:

Complainant has excepted to the conclusions suggested in the report proposed by our examiner.

Complainant is a corporation dealing in molasses, syrups, and sugars at Harvey, La., on the west bank of the Mississippi River within the port and switching limits of New Orleans, La. It alleges that the demurrage charges assessed for the detention of cars at its plant under separate average agreements with the Texas & Pacific Railway Company, the Missouri Pacific Railroad Company, and the Trans-Mississippi Terminal Railroad Company, are unreasonable to the extent that they exceed the charges that would have accrued had they been assessed under a single average agreement. The complainant asks reparation during the two-year period immediately preceding the filing of the complaint on August 11, 1919. For convenience we will refer to the Trans-Mississippi Terminal Railroad Company as the terminal company, and to the Texas & Pacific Railway Company and Missouri Pacific Railroad Company as the trunk lines.

Prior to about April 1, 1916, complainant's plant was served by the Texas & Pacific, and the average agreement under the demurrage rules which complainant had entered into with that road applied in connection with the detention of all cars switched to and from

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complainant's plant by the Texas & Pacific, irrespective of what carrier performed the line haul to or from New Orleans. Under an agreement entered into early in 1916, the Missouri Pacific was granted trackage rights over the main line of the Texas & Pacific up to the yard limits at New Orleans. The terminal company was organized about the same time, and took over by purchase or lease all the terminal tracks and facilities of the Texas & Pacific at New Orleans, including the switch track serving complainant's plant. By agreement the trunk lines mentioned acquired the right to use the tracks and facilities of the terminal company. The latter company is a separate corporation, and files its individual tariffs with us, but half its stock is owned by the Texas & Pacific and half by the Missouri Pacific.

About April 1, 1916, when the terminal company commenced operations, the complainant was required against its protest to enter into three separate average agreements—one with each of the trunk lines mentioned and one with the terminal company—in lieu of the previous single agreement with the Texas & Pacific. The average agreements of the two trunk lines apply only in connection with traffic on which those respective roads have the line haul to or from New Orleans, and the average agreement with the terminal company applies in connection with all other traffic switched to and from complainant's plant by that company. This arrangement has continued in effect up to the present time. Complainant explains that the present arrangement results in the payment by it of more demurrage charges than would accrue under the previously existing arrangement. Under the single demurrage agreement formerly in effect all credits earned could be offset against all debits incurred, while under the present agreement credits earned under one average agreement may be offset only against debits incurred under the same agreement, and an excess of debits over credits under either of the average agreements during a given period results in the payment of demurrage by complainant, although the total of credits earned under the three average agreements may equal or exceed the total debits. Under the three average agreements the demurrage which complainant would pay is less than the amount which would accrue under the straight demurrage plan.

The trunk lines do not serve complainant's plant with their own power. Switching of the traffic of these roads to and from complainant's plant is performed over the track and by the engine and crew of the terminal company. The terminal company's agent is also the agent of each of the trunk lines, and issues separate bills of lading in the name of each of them on traffic for those roads,

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respectively, and in the name of the terminal company on its traffic. The switching service at complainant's plant at present, as prior to April 1, 1916, is performed over the same track and by one engine crew. Complainant contends that this unity of service makes the separation of the demurrage charges in reality only an accounting matter, and affords no justification for the increased charges. Complainant referred to one other plant at New Orleans where traffic originating at or destined to points on various lines is included under a single average agreement with the line performing the switching service, and to other terminal lines having only one average agreement with each industry which they serve covering all the traffic; but it was not shown that the circumstances were similar to those at complainant's plant.

The defendants put in evidence a copy of a contract between the three roads referred to respecting the operation and use of the terminal tracks and facilities in question. The following is an excerpt:

It is further agreed that as to freight equipment the railway company, party hereto, delivering the same to or receiving the same from the Terminal Company shall be held liable and bound for all per diem charges accruing thereon, and said equipment, while, in the charge of the Terminal Company, shall be considered as in the charge of the railway company, party hereto, delivering it to or receiving it from the Terminal Company, and said railway company shall account for the per diem charges thereon and the Terminal Company will make all interchange reports for the railway companies, parties hereto. It is further agreed that all demurrage charges that may be collected by the Terminal Company on freight equipment delivered to it by either the Pacific Company or the Iron Mountain Company, shall be paid to the company delivering said equipment to the Terminal Company.

The tariffs of the terminal company on file with us contained the following:

The Missouri Pacific Railroad Company and the Texas & Pacific Railroad (J. L. Lancaster and Pearl Wight, Receivers), their successors or assigns, owning the right to use the Trans-Mississippi Terminal Railroad Company's tracks and facilities, all traffic to and from stations shown in Item No. 125. via these lines, or to and from industries and warehouses located on Trans-Mississippi Terminal Railroad Company's tracks, moving from and to points beyond the Trans-Mississippi Terminal Railroad Company stations, via those lines, will be treated as their traffic and handled under the tariffs published by those companies, where the Missouri Pacific Railroad Company and (or) the Texas & Pacific Ry. (J. L. Lancaster and Pearl Wight, Receivers), receive a line haul to or from stations west of Mile Post 9.

The defendants contend that in switching traffic of either of the trunk lines to and from complainant's plant, the terminal company acts merely as agent for such trunk line, and that it is as if the rails of each of the three carriers referred to separately and actually reached complainant's plant. Under the tariff provision quoted, the
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individual tariff rules of the trunk lines mentioned apply to traffic of the character described from and to complainant's plant.

The complainant protested soon after the present arrangement was instituted, and certain officials of the trunk lines indicated a willingness to go back to the system of one average agreement; but this was not done because, in the opinion of the legal departments of the carriers, such consolidation of accounts through one average agreement would violate the antipooling provision of the act to regulate commerce. The first paragraph of section 5 of the act as it then stood read as follows:

That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freight as aforesaid, each day of its continuance shall be deemed a separate offense.

Demurrage charges, which are in part a penalty and in part compensation for the use of equipment, constitute a portion of the earnings of the carriers, and it may well be that a contract or agreement under which the credits earned at a particular point or industry on the traffic of one carrier might be used to offset debits incurred in connection with traffic of another, is at least within the spirit of the inhibition of the section quoted. However, we are not required to determine the validity of this defense, for we have not been referred to any requirement of law which compels several carriers subject to the act, against their will, to enter into a single joint arrangement with a shipper for the interchange of demurrage credits and debits.

The defendants insist that the average agreement is a concession from the straight demurrage charge which a carrier may lawfully grant or withhold, and that if granted it may be done in whatever manner and restricted by whatever rules and regulations it may see fit to prescribe, even to the extent of being arbitrary, provided undue prejudice does not result, and cite *Washburn-Crosby Milling Co. v. S. Ry. Co.*, 22 I. C. C., 465. No undue prejudice is alleged in this case.

With respect to the period covered by the complaint prior to federal control we conclude that the situation at complainant's plant was the same as if the rails of the three carriers mentioned separately reached the plant and that each of the carriers was within its rights in applying its separately established demurrage rules in connection with the traffic which it handled, and that it was not unlawful to require the execution of separate average agreements.

From January 1, 1918, until March 1, 1920, the trunk lines and the terminal company were operated under federal control. While

the Director General might have provided for the assessment of demurrage at complainant's plant on traffic handled by the three lines in question under a single average agreement, he did not do so, and nothing in the federal control act required that he should so do. We do not think that it was unreasonable that the Director General did not make the radical change in policy which this would have necessitated. There is force in the contention that with respect to demurrage it was within the discretionary power of the President or his representative, the Director General of Railroads, in the first instance to treat the railroad corporations as a unit or as separate lines. The assessment of average demurrage is a concession from the straight demurrage charge and is a privilege or option extended on the part of the carrier. *Washburn-Crosby Milling Co. v. S. Ry. Co.*, *supra*. We have not been referred to any rule of law which compelled the Director General to extend such privilege or option. The adoption or retention by the Director General of the plan of separate average agreements executed by the complainant with each of the carriers referred to under federal control is not shown to have resulted in an unreasonable regulation, practice, or charge.

In the absence of an attack upon the measure of the demurrage charges assailed, or of any showing of undue prejudice, the record affords no basis for a finding that the demurrage charges assailed, during the period covered by the complaint, resulting from the operation under three average agreements at complainant's plant, and which were less than the charges which would have accrued under the straight demurrage plan, were unreasonable or otherwise unlawful.

An order will be entered dismissing the complaint.

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No. 11338.

GREAT FALLS BRICK & TILE COMPANY

v.

DIRECTOR GENERAL, CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY, ET AL.

Submitted January 3, 1921. Decided March 3, 1921.

Rates on brick (except bath or enamel), hollow building tile, and fire clay, in straight or mixed carloads, from Great Falls, Mont., to certain points in Wyoming, found unreasonable and unduly prejudicial. Reasonable and nonprejudicial relationship prescribed for the future.

J. W. Goodman for complainant.

H. P. Schiffer for Great Falls Commercial Club, intervener.

F. G. Dorety and *R. J. Hagman* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

FORD, *Commissioner*:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was argued orally before us, in the light of which we have modified the conclusions suggested by him.

Complainant is a corporation engaged in the manufacture of brick, hollow building tile, and kindred clay products, with plant at Great Falls, Mont. By complaint filed March 22, 1920, as amended, it alleges that the combination rates maintained by defendants on brick (except bath or enamel), hollow building tile, and fire clay, in straight or mixed carloads, from Great Falls to certain points in Wyoming, are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce. Reasonable rates are asked for the future. Rates are stated in cents per 100 pounds and do not include increases under *Increased Rates, 1920*, 58 I. C. C., 220.

The Great Falls Commercial Club, a voluntary association of firms and individuals, intervened in support of the complaint.

The points of destination here concerned are in Wyoming. They include all points on the Chicago, Burlington & Quincy Railroad,
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hereinafter referred to as the Burlington, between Parkman and Newcastle, both inclusive, located on what is termed its Sheridan line, and all points between Frannie and Orin Junction, both inclusive, on what is called its Casper line; also points on the Wyoming & Northwestern from Powder River to Lander. The destination territory will be sometimes hereinafter referred to as the Wyoming territory.

Complainant alleges that its principal competitors are at Denver, Colo., and Dickinson and Hebron, N. Dak., and that there are joint rates in effect from these points to the Wyoming territory. Dickinson and Hebron are located on the Northern Pacific Railway, not a party to this proceeding. The record shows, however, that during the year 1919 only two cars of brick were shipped from Hebron and none from Dickinson to this territory, and that practically the only competition encountered by complainant therein is from Denver.

From Denver the Burlington reaches this territory over its own rails. The Colorado & Southern, not a party to this proceeding, also serves it from that point in connection with the Burlington. From Great Falls the route is via the Great Northern Railway to Billings, Mont., 235 miles, and thence the Burlington's Sheridan line; or via the Great Northern to Mossmain, Mont., 223 miles, and thence the Burlington's Casper line; or via Mossmain and the Burlington to Powder River, Wyo., and thence Wyoming & Northwestern to points on that line.

There are no joint rates in effect on the commodities here under consideration from Great Falls to the Wyoming territory. The applicable interstate rates are on the basis of the Great Northern's local intrastate commodity rates from Great Falls of 16 cents to Mossmain and 17 cents to Billings, and the Burlington's local interstate rates from those junctions to destinations. To points on the Wyoming & Northwestern the local rates of that carrier from Powder River to destinations are added.

The Burlington's rates from Denver to this territory are to a great extent blanketed. The following table shows the blanket rates on brick (except bath or enamel), hollow building tile, and fire clay, in straight or mixed carloads, minimum weight 50,000 pounds, from Denver to points here concerned on the Burlington, the extent of the blankets, the average distances to same, and average ton-mile earnings, as compared with the average rates, distances, and earnings to the same points from Great Falls.

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To points on—	From Denver.			From Great Falls.		
	Average distances.	Rates.	Average earnings per ton-mile.	Average distances.	Average rates. ¹	Average earnings per ton-mile.
Casper line, including Cody branch, between Bonneville and Frannie, both inclusive.....	<i>Miles.</i> 631	<i>Cents.</i> 30	<i>Mills.</i> 9.51	<i>Miles.</i> 336	<i>Cents.</i> 32.54	<i>Mills.</i> 19.37
Sheridan line between Newcastle and Sheridan, both inclusive.....	479	29	12.10	470.4	43.09	18.41

¹ The Great Northern permits the mixing, in carloads, of brick and fire clay at the commodity rate but not hollow building tile.

² The short-line route from Denver to points on Casper line is Colorado & Southern to Wendover, Wyo., and Burlington beyond. This route is 70 miles shorter than route via Burlington alone.

The grouped points on the Casper line, including those on the Cody branch of the Burlington, will be hereinafter referred to as the Frannie group, the grouped points on the Sheridan line as the Sheridan group. These two groups include all of the destinations on the Burlington here concerned except six on the Casper line located southeast of Bonneville, of which Casper may be taken as representative, and three points, namely, Parkman, Ranchester, and Dietz, located on the Sheridan line northwest of Sheridan and near the Wyoming-Montana state line. Casper is a point which complainant is particularly interested in reaching. The Burlington's rate from Denver to Casper, 406 miles, is 25 cents. The rate to the same point from Great Falls, 540 miles, is 46 cents. The ton-mile earnings under the respective rates are 12.32 and 17 mills. Parkman, Ranchester, and Dietz take a 30-cent rate from Denver for an average distance of 587 miles. The average rate from Great Falls to these points is 35 cents for an average distance of 362 miles. There are no through rates on the commodities here under consideration from Denver to points on the Wyoming & Northwestern applying in connection with that line and the Burlington. Such traffic from Denver apparently moves Colorado & Southern to Wendover or Guernsey, Wyo., Burlington to Orin Junction, Chicago & North Western to Casper, and thence Wyoming & Northwestern.

Complainant asserts that the Wyoming territory is a natural zone for the distribution of its products, but that due to the comparatively high freight rates from Great Falls it has been unable to meet the prices of its competitors, especially from Denver, and hence has been unable to develop its trade in this territory. It maintains that the rates from Great Falls, mile for mile, should be on a parity with the rates from Denver, and proposes the establishment of a mileage scale of rates which begins at 19 cents for 300 and over 275 miles, and increases 1 cent for each additional 25 miles until it reaches 33 cents for 650 and over 625 miles. Complainant states that this proposed

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scale is based on the scale of joint rates maintained by the Northern Pacific and the Burlington from Hebron to the Wyoming territory. The rates from Hebron apply over the Northern Pacific to Billings, 371 miles, and the Burlington beyond.

Defendants object to this proposed scale. They assert that the rates from Hebron, which were initiated by the Northern Pacific, are extremely low and out of line with the general level of such rates in that territory; and, further, that they are, in effect, paper rates, as practically no traffic moves under them. The Burlington admits, however, that the present relation between the rates from Great Falls and from Denver to the Wyoming territory is unduly prejudicial to Great Falls. It asserts its willingness to establish rates from its junctions Mossmain and Billings to points on its line here concerned which will conform to the mileage basis of rates published by it from Fromberg, Mont., and Sheridan, where brick plants are maintained, to the same destinations. To points on the Casper line rates constructed on such a basis would range from 11 cents from Mossmain to Frannie, 60 miles, to 23 cents, to Orin Junction, 385 miles; to points on the Sheridan line from 12 cents from Billings to Parkman, 118 miles, to 22 cents to Newcastle, 321 miles. The Burlington claims that by establishing such rates the combination rates that would result from Great Falls to the Wyoming territory would be fair and reasonable and would remove the undue prejudice that exists against Great Falls in favor of Denver.

Complainant, while admitting that the adjustment proposed by the Burlington would afford a certain measure of relief, contends that it would be wholly inadequate and much less than that to which it is entitled. It further states that it is not in competition with the brick plants at Fromberg and Sheridan, as those plants do not make the same character of brick as complainant.

As above shown, the Burlington rates from Denver to the Wyoming territory apply on either straight or mixed carloads. The Great Northern states that it has not been its practice to allow such a mixture in connection with the commodity rate. However, it does permit the mixing of brick and fire clay, in carloads, at the commodity rate from Great Falls, and there appears no good reason why the same permission should not be accorded with respect to hollow building tile.

The average distance from Denver to points within the Sheridan group as shown is 479 miles, approximately the same as the average distance from Great Falls to the same points. There is, however, a striking difference in the rates, Denver taking a 29-cent rate to this group, while from Great Falls the rates range from 37 cents to 51 cents, and average 43.69 cents. To the Frannie group there is a

rate of 30 cents applicable for an average distance of 631 miles over the Burlington as compared with an average rate of 32.54 cents for an average distance of 336 miles from Great Falls to the same points. There is no showing that the rates maintained by the Burlington are too low, nor is it shown, other than that the movement from Great Falls involves a two-line haul, that there is any difference in the transportation and operating conditions from Great Falls as compared with Denver to the territory here concerned.

As the Burlington has, on traffic from Denver, grouped most of the Wyoming territory, it seems logical that in prescribing rates for the future from Great Falls we should deal with the groups as we find them.

We find that the rates assailed are, and for the future will be, unreasonable and unduly prejudicial, to points on the Burlington, Parkman to but not including Sheridan, to the extent that they exceed or may exceed rates 1 cent per 100 pounds lower than the rates contemporaneously maintained from Denver; to points on the Burlington, Sheridan to Newcastle, both inclusive, to the extent that they exceed or may exceed the rates contemporaneously maintained from Denver by more than 2 cents per 100 pounds; to points on the Burlington, Bonneville to Frannie, including points on the Cody branch, to the extent that they exceed or may exceed rates 5 cents per 100 pounds lower than the rates contemporaneously maintained from Denver; and to points on the Burlington, Orin Junction to but not including Bonneville, to the extent that they exceed or may exceed the rates contemporaneously maintained from Great Falls to the Bonneville-Frannie group last above described by more than 5 cents per 100 pounds.

The record does not justify a finding that the local rates of the Wyoming & Northwestern from Powder River are unreasonable.

The question of reasonable and nondiscriminatory rates on brick, clay, and hollow building tile between points in the United States is now before us in docket No. 10733, *National Paving Brick Manufacturers Asso. v. A. & V. Ry. Co.*, on a more comprehensive record. Our findings herein are without prejudice to any conclusions we may reach in that case.

An appropriate order will be entered.

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No. 11640.
SWIFT & COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted December 20, 1920. Decided March 3, 1921.

Charges by defendant for the interstate transportation of less-than-carload shipments of dressed poultry, butter, eggs, and cheese from points in Illinois, Indiana, Iowa, Michigan, and Ohio not found unjust or unreasonable. Complaint dismissed.

R. D. Rynder for complainant.

Clyde E. Shorey for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

FORD, *Commissioner*:

The complainant corporation alleges that the freight charges assessed by the defendant for the transportation, during the period from March 15, 1919, to September 5, 1919, of numerous less-than-carload shipments of dressed poultry, butter, eggs, and cheese from complainant's plants located in the states of Illinois, Indiana, Iowa, Michigan, and Ohio to interstate destinations, were unjust and unreasonable in that the defendant allowed the complainant not in excess of \$3 per net ton for ice and nothing for the salt supplied for the initial icing of the shipments, and that a just and reasonable allowance would have been the cost, but not to exceed \$4 per net ton for the ice and 75 cents per 100 pounds for the salt. Reparation only is asked.

The freight charges assailed covered both the haul and the refrigeration service, no extra charge being made for the latter service. Prior to March 15, 1919, in the case of traffic where the freight charges did not include refrigeration, defendant made a charge of not less than \$2.50 per net ton for ice furnished by him to protect perishable freight during transit, the charge including the cost of labor and salt, subject to the exception that:

At points where it is impracticable for the railroad companies to furnish ice for such shipments it may be furnished by shippers and the allowance to shippers therefor shall be the actual cost of the ice, but not exceeding \$3 per ton of 61 I. C. C.

2,000 pounds, for the actual weight of the ice furnished * * * the amount named above will include the expense allowed for ice, labor, and salt.

A corresponding allowance was made under similar circumstances in the case of traffic, such as that involved in this proceeding, where the freight charges included the icing service. Effective March 15, 1919, defendant's charge for furnishing ice was increased to \$4 per net ton and a new charge of 75 cents per 100 pounds for the salt supplied was established. Effective August 16, 1919, the allowance to the shipper who furnished the ice at points where it was impracticable for defendant to furnish it, was increased to the actual cost of the ice, but not exceeding \$4 per net ton. On September 5, 1919, the actual cost of the salt, but not to exceed 75 cents per 100 pounds, was allowed to the shipper.

The contention of complainant is in effect that as the defendant's charge for furnishing ice and salt during the period of movement was \$4 per net ton and 75 cents per 100 pounds, respectively, to allow complainant less for furnishing the same resulted in unreasonable charges on the shipments. Complainant admits that it was more convenient for it to do the icing than it was for defendant, and resulted in a more prompt movement of the shipments.

In furnishing the ice and salt for these shipments the complainant admittedly performed a transportation service which it was impracticable for defendant to perform. There is no evidence of record, however, that the through charges assessed on the shipments, less the allowance made to complainant for ice and salt furnished, were unjust or unreasonable for the service performed by defendant.

The complaint will be dismissed.

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No. 8118.¹

INMAN-POULSEN LUMBER COMPANY ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted July 27, 1920. Decided March 15, 1921.

On further hearing reparation awarded on shipments of lumber from Portland, Oreg., to various points on account of damage due to unduly prejudicial rates. Original reports, 42 I. C. C., 275 and 55 I. C. C., 357.

James G. Wilson for complainants.

Ben C. Dey, Fred H. Wood, C. W. Durbrow, and Elmer Westlake for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

The issues here presented were made the subject of a proposed report and exceptions thereto were filed by defendants.

In our original report in No. 8118, 42 I. C. C., 275, we found that the Southern Pacific Company's rates on fir and hemlock lumber and lath, in straight or mixed carloads, from Portland, Oreg., to San Francisco and certain other California points, were and for the future would be unduly prejudicial to the extent that they exceeded or might exceed the rates contemporaneously maintained by that carrier on like traffic from Oregon points in the Willamette Valley and on the so-called Tillamook branch to the same destinations, but that the allegation of unreasonableness had not been sustained. At the original hearing complainants stated that the adjustment complained of had been in effect for only a short period, and that few shipments had moved from and to the points concerned during that period, but that shipments were still being made. They requested the privilege of filing with us, if the rates assailed were found to be unreasonable or unduly prejudicial, a statement of the shipments upon which reparation was claimed. No finding was, therefore, made at that time upon the question of reparation.

A supplemental complaint asking that the Spokane, Portland & Seattle Railway Company be made an additional party, and that reparation be granted on a number of shipments set forth in an

¹ This report also embraces No. 9364, *Saine v. Same*, 61 I. C. C.

exhibit to the complaint, was filed with our permission May 14, 1917. A supplemental hearing was had and in the report therein, 49 I. C. C., 600, we found that no evidence had been offered showing the details of the shipments, that complainants had paid and borne the freight charges, or that they had suffered damage as a result of the undue prejudice. The complaint was dismissed.

Upon complainants' petition for rehearing an order was entered June 27, 1918, reopening the case. At the second supplemental hearing it was stipulated by the parties that the testimony and briefs in No. 9364, *Inman-Poulsen Lumber Co. v. S. P. Co.*, 55 I. C. C., 357, on the matter of reparation, should be considered as if introduced in this case, the issues as to reparation in the two cases being identical. In the cited case we found, among other things, that the rates on fir and hemlock lumber, except rough green fir and lath, also on mining timbers, mine wedges, fence posts, and railroad ties, in straight or mixed carloads, from Portland, Oreg., to points on the Southern Pacific south and east of San Francisco, not including bay points, and to points on the Atchison, Topeka & Santa Fe east of Mojave, Calif., were, during certain specified periods, unduly prejudicial to the extent indicated. It was held that damage had not been proven and reparation was denied.

On February 9, 1920, complainants in No. 9364 filed a petition for rehearing, whereupon orders were entered March 9 and 11, 1920, reopening Nos. 9364 and 8118, upon the question of reparation under our findings. The two cases were consolidated and further hearing was held. No further evidence was submitted for defendants, and it is unnecessary to repeat the facts upon which our former conclusions were based.

It is clear, and we so found in the original report in No. 9364, that the Portland and Willamette Valley mills are in keen competition with each other; that lumber is sold delivered; that when the rates from Willamette Valley were reduced certain of the Portland mills agreed among themselves to quote delivered prices in certain territory based on the Valley rates and not on the Portland rates; that the consignees deducted the Portland freight charges from the invoice price; and that complainants lost the difference between such freight charges and those that would have accrued at the Willamette Valley rates. We also found that the record "nowhere showed that the Valley mills reduced their delivered prices by the amounts of the reduction in their rates, or that they set the price at which complainants were obliged to sell," and concluded as follows:

We can award reparation for damages resulting from unduly prejudicial rates only where the evidence as to fact and amount of damage would be sufficient to sustain a recovery in court. *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43. The evidence before us does not show that the Willa-

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mette Valley rates were the proximate cause of any injury which the complainants sustained following the establishment of those rates, or what, if any, was the damage resulting from an injury so caused. In the absence of such a showing there is no assurance that the relationship between the rates from two originating regions resulted in injury to the complainants.

It was for the purpose of allowing complainants an opportunity to introduce additional proof of damage that the further hearing was granted.

There is uncontroverted evidence that immediately after October 22, 1915, when the 17.5-cent rate was put into effect on fir and hemlock lumber and lath from the Willamette Valley to San Francisco Bay points and other intermediate points, the Willamette Valley mills dropped their selling prices to the full extent of the reduction in the freight rates; that they set the price at which complainants were obliged to sell, and that complainants met the full reduction in price by absorbing the difference in freight rates in order to hold their business. A witness testified that this was done by the issuance of a general discount sheet to their customers with the notation "use in connection with the 17.5-cent rate; not in connection with the rate in effect from Portland."

The mill prices were the same at both the Willamette Valley and the Portland mills, but the freight rates from Portland to the destination territory were 0.25 cent to 4 cents higher than those paid by complainants' competitors for substantially similar service. Previously the rates had been the same to all points of destination involved, and to certain points, like Fresno, Calif., for instance, the rates remained the same from both the Valley and Portland. The sales that were made to such points netted complainants the same amounts as the Valley mills received, and of course no reparation is claimed as to such shipments. Both Portland and the Valley now enjoy the same rates to all points.

At the time the shipments moved complainants were engaged in manufacturing the same kinds of lumber as their competitors in the Willamette Valley, which was sold in the same general competitive markets; they were forced to and did meet the reduced prices at which their competitors sold, and under such circumstances it was impossible to add the differences in the freight rates to their selling prices. Complainants were compelled to absorb such differences out of their profits. They have now shown with reasonable certainty that they were compelled to forego certain profits solely because the freight rates from Portland exceeded the rates contemporaneously available to their competitors in the Valley on like traffic, and that they have suffered a pecuniary loss as a result of the additional transportation charges paid. It follows, therefore, that the Wil-

lamette Valley rates were the proximate cause of the injury which the complainants sustained following the establishment of those rates, and their damage is measured by the difference in freight rates.

Complainants refer to our findings in our original report, 42 I. C. C., 275, that lumber from the Tillamook branch was moving through Portland to the same destinations under rates that were in violation of the long-and-short-haul rule of the fourth section, and contend that they are therefore entitled to reparation to the extent of the difference between the higher charges paid from Portland and the rate of 17.5 cents. This contention is without merit. *Iten Biscuit Co. v. C., B. & Q. R. R. Co.*, 50 I. C. C., 724; 53 I. C. C., 729; and *Oregon Fruit Co. v. S. P. Co.*, 50 I. C. C., 719.

We find that complainants made the shipments as described and paid and bore the charges thereon at the rate which was found in the original reports herein to have been unduly prejudicial; that they have been damaged to the extent that the charges collected exceeded the charges that would have accrued at the rates contemporaneously applicable from the Willamette Valley and Tillamook branch points in Oregon taking Willamette Valley rates as described in our original reports herein; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

HALL, *Commissioner*, dissenting:

In our last report in No. 9364, 55 I. C. C., 357, we found that the rates on the commodities named from Portland to—

(a) points on the Southern Pacific south and east of San Francisco, but not bay points, between October 17, 1916, and March 14, 1917, both inclusive, and—

(b) points on the Santa Fe east of Mojave between October 22, 1915, and March 14, 1917, both inclusive, were unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect from Willamette Valley points to the same destinations. It will be observed that the reparation period under (a) is about 5 months, and under (b) about 17 months, both ending on March 14, 1917.

In our earlier report in No. 8118, 42 I. C. C., 275, we had found on November 29, 1916, that the rates on these commodities from Portland, but including also rough green fir, to—

(c) San Francisco and bay points and points north thereof to and including Marysville, and also to Auburn, Calif., had been since October 22, 1915, were, and for the future would be unduly prejudicial to the extent of their excess over contemporaneous rates on like traffic

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from Willamette Valley and Tillamook branch points to the same destinations. Here, as in (b), the reparation period is about 17 months.

The testimony as to reparation purports to cover the entire period since October 22, 1915, when rates on these commodities from Valley points became less than from Portland. There seems to be no separation in the testimony between shipments to Southern Pacific points under (a), shipments to Santa Fe points under (b), and shipments to bay points and north under (c).

The evidence as to both the fact and the measure of damage due to undue prejudice as the proximate cause is vague, general, and unsatisfactory, and in my opinion is, for the following reasons, insufficient upon which to make an award of reparation:

1. There is no evidence to show definitely just when complainants reduced their prices to the extent of the difference in the rates. The witness for the Eastern & Western Lumber Company, the principal witness at the further hearing, testified that it might have been a week, 10 days, or two weeks after the reduction in the rates from the Valley before his company commenced to absorb the difference in freight rates. The witness for the North Pacific Lumber Company testified that he did not know when his company commenced to absorb that difference. At the former hearing the witness for the first-named company introduced copies of correspondence which show that as late as September 23, 1916, that company thought it *probable that in the future* it would have to absorb the difference in the freight rates.

2. Our findings of undue prejudice in 55 I. C. C., 357, did not include rough green fir, the rates on which from the Valley were from 7.5 cents to 4 cents under the other lumber rates after September 1, 1911. Extension of this difference to the higher grades of lumber on October 22, 1915, could hardly have made it necessary thereafter for complainants to absorb the difference on rough green fir. One witness testified that about 10 per cent of his company's lumber sold at California points was rough green, without distinguishing between destinations under (a) and destinations under (c).

3. There is said to be very little difference between rough green and dimension lumber other than the surfacing of the latter at a cost of 25 or 50 cents per thousand feet. Since September 1, 1911, complainants paid higher rates on rough green than the Valley mills paid. It seems very improbable that it became necessary for them to absorb the difference when it was extended to include dimension lumber. There is nothing of record to show how many of the shipments on which reparation is asked consisted of dimension lumber.

4. There is no satisfactory evidence showing that the Valley mills set the prices and that complainants were forced to meet such prices

to retain their business. The record shows that the prices of the Valley and Portland mills were the same in a *general way*; that when the prices of the Valley mills were reduced to the extent of the reduction in the freight rate the general discount sheet of the Portland mills was *probably* the same as the Valley mills; that the prices of the Valley and Portland mills were *practically* the same; that prices fluctuated from week to week; that there might be some items of stock on which the prices would not be the same; that the Portland mills cut prices occasionally; that the witness's company (Eastern & Western Lumber Company) went further than meeting the competition of the Valley mills when it was interested in cutting prices; that it did not keep discount sheets before the trade with the regularity some mills did; that if prices changed the Portland mills knew it within a day or two, would *probably* hear about it right away and would *probably* hunt around and find out who was doing it, and *if* it were from the Valley they would fall in line with them.

The record appears to show quite clearly that the Valley mills made the market at times, complainants at other times, and other mills at still other times. When mills other than the Valley mills made the market apparently complainants met the market so made. It can not fairly be said on this record that the Valley mills made the market at all times from October 22, 1915, to March 17, 1917, or at any particular time during that period, or that complainants or any of them were forced to forego profits on all or on any particular shipments made during that period because of the difference in the freight rates. Certainly the difference in the freight rates was not the cause of loss of profits when complainants made the market, when mills other than the Valley mills made the market, and when complainants' prices were higher than those of the Valley mills. Complainants lost no profits on shipments booked before and shipped after the reduction in rates from the Valley. Yet reparation is asked on all shipments made during this period.

The record is significantly bare of price figures, whether mill price or selling price of complainants, or mill price or selling price of other Portland mills, Valley mills, or Tillamook branch mills. It fails to specify the transactions on which complainants were damaged by the undue prejudice found. Complainants' claims are several. Each must recover for itself, if at all, and it is worthy of at least passing remark that only four of the mills at Portland are before us as complainants.

In short, we have here, lumped together in the finding of damage, all shipments made by all four of the complainants at any time during the periods when the rates were found by our earlier reports to have been unduly prejudicial, without distinction between those on

which damage resulted from difference in the freight rates, and those on which such damage is not proven or indeed could not have resulted, because booked before and shipped after the rate change, shipped when complainants or some of them made the market, shipped when other mills not in the Valley made the market, or shipped when complainants' prices were higher than those of the Valley mills. Proof thus lacking can not be supplied by compliance with rule V.

In my opinion the complainants have failed in their proof despite the additional opportunity given them at their request on this further hearing, and despite the intimations in our last report of the particulars in which their proof was then lacking. The complaints should be dismissed.

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No. 11441.

HOBART MILL & ELEVATOR COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, AND ST. LOUIS-SAN
FRANCISCO RAILWAY COMPANY.

Submitted October 17, 1920. Decided March 31, 1921.

Defendant's distribution of cars for grain loading from July to December, 1919, found unduly prejudicial to complainants at Cold Springs, Okla., and unduly preferential of their competitors at Roosevelt, Mountain Park, and Snyder, Okla. Proceeding held open temporarily to permit complainant to make a showing for further hearing as to damages.

Rummons & Hughes for complainants.*M. G. Roberts* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

The issues here presented were made the subject of a proposed report, to which complainants filed exceptions.

Complainants, Hobart Mill & Elevator Company and George B. Tarr, jointly own and operate a grain elevator at Cold Springs, Okla., and ship grain to interstate points. By amended complaint filed April 28, 1920, they allege that the St. Louis-San Francisco Railway, hereinafter called defendant, subjected them to undue prejudice in failing and refusing to furnish, from July 1, 1919, to December 1, 1919, the proportion of cars to which they were lawfully entitled, and unduly preferred other operators of grain elevators at near-by points by furnishing them a larger proportion of cars than was furnished to complainants. They ask for reparation, but for no other relief.

Cold Springs is on defendant's line between Enid, Okla., and Vernon, Tex. The alleged preferred elevators are located on the same line in Oklahoma at the following points; two at Roosevelt, about 5 miles north of Cold Springs; one at Mountain Park; and one at Snyder, about 8 and 10 miles, respectively, south of Cold Springs. During the wheat shipping season of 1919 there was an acute shortage of grain cars in this territory.

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From July 1 to December 1, 1919, 17 cars were furnished to complainants. Defendant's records indicated that for the same period 39 cars were furnished to one elevator at Roosevelt, 44 to the other, and 47 to the elevator at Mountain Park. It appears that 86 cars were furnished to the elevator at Snyder for this time, excluding a period of about 72 days, for which no records were produced. Complainants were furnished 10 cars, apparently after December 1, 1919, and during a period when an embargo was in effect on grain shipments generally. These 10 cars were furnished as a result of a special investigation and report on grain-car shortage at stations on the division of defendant on which Cold Springs is located.

Complainants contend that under a fair and equitable distribution they should have received 45 cars during the period in question; that by reason of the alleged undue prejudice they were prevented from shipping in interstate commerce 28 cars of wheat, and were deprived of the profits thereon. There were various estimates upon the capacity of the cars ranging from 1,000 bushels for the smaller to 1,500 bushels for the larger cars. The average profit upon wheat actually shipped by complainants during the period in question was stated to be about 10 cents a bushel.

No settled practice or fixed rule was in effect for the distribution of grain cars between stations on defendant's line. The defendant's chief dispatcher, who was in charge of the distribution of cars, testified that he made such distribution on the basis of the amount of grain on hand at the various stations, as reported to him daily by the station agents.

The table below shows the capacity of the elevators of complainants and their competitors at Roosevelt, Mountain Park, and Snyder, with the number of cars furnished to each during the period from July 1 to December 1, 1919:

Elevator.	Location.	Elevator capacity.	Cars furnished.
		<i>Bushels.</i>	<i>Cars.</i>
Complainants'.....	Cold Springs, Okla.....	7,000	17
Hobart Mill & Elevator Co.....	Roosevelt, Okla.....	12,000	44
Hoffine & Co.....	do.....	12,000	39
Beardon & Burns.....	Mountain Park, Okla.....	10,000	47
H. S. Lewis.....	Snyder, Okla.....	8,000	136
Total.....	.....	49,000	183

¹ During periods July 1-20 and October 1 to December 1, 1919.

There is some confusion in the record as to the capacity of the elevators operated by complainants' competitors. In the above table the highest capacity placed upon them by any witness is shown. During the period covered by the complaint all of these elevators were continuously filled to capacity.

The capacity of complainants' elevator at Cold Springs is about 14 per cent of the total capacity shown. Had they received their proportionate share of the cars distributed, on the basis of grain on hand, they would have received not less than 25 cars out of the 183 furnished during the period in question.

The chief dispatcher was unable to explain the marked discrepancy between the number of cars furnished complainants and those furnished their competitors at the stations named. That defendant's officials were convinced that complainants had not been equitably dealt with in the matter of car distribution is indicated by the instructions given in December, 1919, after an investigation of the situation, that complainants be excepted from the operation of a general embargo which had been placed on shipments of grain from this territory in order that, as defendant's witness expressed it, they might have "a chance to catch up." This latter action of defendant was clearly unduly prejudicial to other shippers, who were held to the strict observance of the embargo, and could not justify any previous undue or unreasonable prejudice against the complainants.

Upon the record we find that the defendant's practice in the distribution of cars for grain loading during the period in question was unduly prejudicial to the complainants and unduly preferential of their competitors at Roosevelt, Mountain Park, and Snyder, Okla. The present record is not such that we can determine with any degree of certainty the amount of the damages, if any, sustained by complainants by reason of such undue prejudice. The defendant's subsequent distribution of cars is satisfactory to complainants and no relief for the future is sought. The complainants will be allowed 30 days from and after the service of this report within which to make a showing in support of an application for further hearing on the question of damages; in default thereof, the complaint will be dismissed.

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INVESTIGATION AND SUSPENSION DOCKET No. 1232.

COAL FROM ILLINOIS TO MICHIGAN.

Submitted March 16, 1921. Decided March 31, 1921.

Proposed cancellation of joint rates on coal from mines on the Minneapolis & St. Louis Railroad in Illinois to destinations in Ohio and Michigan found not justified. The suspended schedules ordered canceled.

F. B. Townsend and M. M. Joyce for respondents.

James A. Fenelon for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

HALL, *Commissioner*:

By schedules filed to take effect November 3, 1920, the Minneapolis & St. Louis Railroad, hereinafter called respondent, proposed to cancel the joint rates on bituminous coal from mines located on its line at or near Bartlett, Hanna, Farmington, and Middle Grove, in the so-called Fulton-Peoria district of Illinois, to destinations in Ohio and Michigan, leaving in effect higher combination rates. Upon protest of the Coal Trade Bureau of Illinois operation of the schedules was suspended until April 2, 1921. Later, by supplement, respondent voluntarily postponed the effective date until June 1, 1921.

For justification of the proposed cancellation respondent relies mainly upon a showing that its divisions of the joint rates are not satisfactory. It contends that these rates were established on short notice during federal control as an emergency measure to relieve a coal shortage in northern Ohio and Michigan; that no consideration was then given to divisions; that since the termination of federal control it has failed to secure what it regards as fair divisions; that the emergency has passed; and that it should no longer be required to participate in the joint rates. Increased charges which result from cancellation of joint rates can not be justified on the ground that the divisions are unsatisfactory. *Switching Absorptions*, 47 I. C. C., 583, 586. If satisfactory divisions can not be agreed upon that matter may be presented to us in an appropriate proceeding.

Respondent called attention to ton-mile earnings ranging from 5.6 to 7.2 mills to five destinations in Michigan, but introduced no other evidence tending to show that the existing rates are too low or that the combination rates would be reasonable.

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Protestant shows that cancellation of the joint rates would leave applicable to 16 representative destinations in Michigan combination rates higher by from 54 cents to \$2.52 per ton. It contends that this would exclude the mines located on respondent's line from the Michigan market, because competing mines in the same district would still have the joint rates, and would also disturb the rate relationship existing between the mines on respondent's line and those in the Springfield and other Illinois districts. Respondent admits that, if joint rates are to be maintained from competing mines in the Fulton-Peoria district, it would probably want to restore them after satisfactory divisions had been agreed upon.

Respondent contends that Michigan is not the normal market for Illinois coal, but, as protestant shows, there has been a substantial and regular movement since the joint rates were established.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

61 I. C. C.

No. 11237.

W. H. DAUGHERTY & SON REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
RAILROAD COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATION NO. 2060.

Submitted October 19, 1920. Decided March 1, 1921.

1. Rate on petrolatum, in barrels, in carloads, from Petrolia, Pa., to Memphis, Tenn., via Ohio River crossings, found unreasonable and unduly prejudicial. Reparation awarded.
2. Rate applicable on the same commodity transported in like manner from and to the same points via Potomac Yard, Va., found not unreasonable or unduly prejudicial.
3. Fourth section relief denied.

C. D. Chamberlin for complainant.

Francis R. Cross for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions to the report proposed by the examiner were filed and argued before us by complainant and defendants.

Complainant, a corporation refining petroleum at Petrolia, Pa., alleges that the rate of 87.5 cents assessed by defendants on certain carload shipments of petrolatum in barrels moving during the period from December 2, 1918, to December 3, 1919, from Petrolia to Memphis, Tenn., was unjust, unreasonable, unjustly discriminatory, and unduly prejudicial as compared with the rate of 86.5 cents to Memphis contemporaneously in effect from Karns, Butler, Neoline, and Oil City, Pa. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates are stated in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Those portions of Fourth Section Application No. 2060 by which authority is sought to charge rates on petrolatum from Oil City to Memphis lower than the rates contemporaneously maintained on like traffic from Petrolia and other intermediate points were heard with this complaint.

The shipments were in seven carloads and were tendered to the Baltimore & Ohio without routing instructions. Some moved through the Ohio River crossings and others through Potomac Yard, Va. Charges were collected on four at the second-class any-quantity rate of 87.5 cents, governed by the southern classification; and on the other three at a rate of 36.5 cents, since billed for undercharges to the basis of the 87.5-cent rate. Complainant has refused payment of the undercharge bills and prays that defendants be directed to cancel them. The 87.5-cent rate was applicable over both routes.

A commodity rate of 36.5 cents was contemporaneously in effect through the Ohio River crossings from points adjacent to or beyond Petrolia. After the filing of the complaint but prior to the hearing, defendants established a commodity rate of 36.5 cents from Petrolia, applicable via Ohio River crossings, thereby correcting any fourth section departure that may have existed. This rate was subsequently reduced to 33.5 cents. The rate via Potomac Yard remained 87.5 cents. The reasonableness of the 36.5-cent rate is not challenged and on brief complainant requested that its prayer for a rate for the future be dismissed.

Petrolatum is the residue of crude petroleum after extraction of the lighter oils, purified by filtration through fuller's earth. It is generally recognized as a petroleum product, and complainant's witness testified that it is the practice of carriers generally in official and western classification territories to afford it petroleum rates, which are less than fifth class.

Complainant relies principally upon the fact that a commodity rate of 36.5 cents was contemporaneously in effect on petrolatum from Oil City, Neoline, Foxburg, Karns, and Butler, Pa., to Memphis via Ohio River crossings. Competitors of complainant are located at all these points and Petrolia is intermediate to Oil City and Foxburg. Complainant directs attention to the fact that petrolatum, in common with other petroleum products, is now accorded commodity rates to the south from Petrolia and other points in central territory. It construes the subsequent establishment of the 36.5-cent rate via Ohio River crossings as a virtual admission that no higher rate is justified and, therefore, that the 87.5-cent rate was unreasonable.

Defendants introduced no evidence as to the reasonableness of the rate assailed or in justification of the maintenance of lower rates via Ohio River crossings from the other oil-producing points in the Oil City district. They refer to the fact that complainant made no request for the establishment of a commodity rate prior to the time these shipments moved and maintain that the subsequent establishment of the rate of 36.5 cents should not be taken as a confession that the rate charged was unreasonable. They urge that maintenance of a rate of 36.5 cents from other points in the vicinity of Petrolia might

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constitute undue prejudice, but does not establish the unreasonableness of the rate attacked; that class rates are properly applied to isolated shipments such as these; and that there has been no showing that the applicable second-class rate was unreasonable. The record fails to show the volume of movement of petrolatum from the competitive points mentioned or whether other shipments have moved from Petrolia to Memphis.

From Petrolia to Memphis via Cincinnati, a two-line haul, the distance is 850 miles. Based on an average weight of approximately 50,000 pounds, the 87.5-cent rate yielded ton-mile earnings of 20.6 mills and car-mile earnings of 51.5 cents. The rate of 86.5 cents would yield ton-mile earnings of 8.6 mills and car-mile earnings of 21.5 cents. The distance via Potomac Yard is 1,639 miles, and the 87.5-cent rate for a four-line haul yields ton-mile earnings of 10.7 mills and car-mile earnings of 26.7 cents.

We find that the rate applicable on the shipments which moved via Ohio River crossings was unreasonable and unduly prejudicial to the extent that it exceeded 86.5 cents; that complainant made such shipments, paid and bore the charges thereon, and has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$678.72, with interest. Collection of undercharges on such shipments may be waived. We further find that the rate applicable on such shipments as moved via Potomac Yard was not unreasonable or unduly prejudicial. We are without authority to order refund of war taxes.

The fourth section application will be denied to the extent that it is involved.

Appropriate orders will be entered.

HALL, Commissioner, dissenting:

The petrolatum in these shipments had a value of from 6 to 12 cents a pound delivered. A shipment of 50,000 pounds would thus be worth from \$3,000 to \$6,000.

It is not contended that the 87.5-cent rate was an unreasonable second-class rate or that petrolatum was improperly classified, but that it was unreasonable and unduly prejudicial to assess a class rate on these shipments when commodity rates were contemporaneously in effect from near-by points. We have no evidence of any movement to Memphis from any of the near-by refineries, and so far as we know the commodity rates from these points are "paper" rates. We know of no shipments from Petrolia to Memphis other than the seven here considered.

In my opinion these were isolated shipments to which class rates are properly applicable and the complaint should be dismissed.

61 I. C. C.

No. 11085.

VIRGINIA IRON, COAL & COKE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND NORFOLK & WESTERN RAILWAY COMPANY.

Submitted October 20, 1920. Decided March 1, 1921.

Demurrage charges assessed on 27 carloads of iron ore at Roanoke, Va., found unreasonable. Reparation awarded.

*D. D. Hull, jr., L. A. Nuckols, and Frank Lyon for complainant.
Lucian H. Cocke, jr., and Lucian H. Cocke, sr., for defendants.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. We have reached conclusions differing from those proposed by him.

Complainant, a corporation manufacturing pig iron at Roanoke, Va., received at various times in December, 1917, and January, 1918, a total of 27 carloads of ex-lake and local iron ore. Demurrage charges aggregated \$2,807. By complaint filed December 15, 1919, it alleges that these charges were illegal, unreasonable, unjustly discriminatory, and unduly prejudicial. An award of reparation and the establishment of a reasonable charge for the future are asked.

The ore was frozen in transit and complainant failed to unload any of the cars within the prescribed free time. When the shipments were received defendants' demurrage tariff provided as follows:

No demurrage charges shall be collected under these rules for detention of cars through causes named below. Demurrage charges assessed or collected under such conditions shall be promptly canceled or refunded by the carrier.

* * * * *

2. When shipments are frozen while in transit so as to prevent unloading during the prescribed free time. * * * Under this rule a consignee * * * shall not be entitled to additional time unless within the prescribed free time he shall serve upon the carrier's agent a written statement that the lading was frozen upon arrival.

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Complainant served no written statement upon the Norfolk & Western, hereinafter called defendant, that the ore was frozen upon arrival, but gave verbal notice to defendant's employee within 48 hours after placement of the cars, and defendant actually knew that the frozen condition of the ore precluded unloading within the free time. This employee, whose duty it was to determine whether cars were loaded or empty, and, if loaded, the reason for their detention, made daily written reports to the terminal trainmaster of defendant at Roanoke that the ore was frozen and that the cars had not been unloaded for that reason. The terminal trainmaster suggested that steam be used to thaw the ore.

The primary purpose of imposing demurrage is to promote the prompt movement of cars in the public interest. Failure to release cars within a reasonable time is a wrong against other shippers desiring to use them and against the general public, which can to a large extent be avoided by the enforcement of appropriate demurrage rules and penalties. Shippers, however, are entitled to a reasonable free time for loading or unloading cars, and the principle has long been recognized that demurrage should not be imposed for delays occasioned by weather interference as defined in the demurrage rule above quoted in part. When a shipment is tendered for delivery in a frozen condition and for that reason can not be unloaded within the prescribed free time, it is not unreasonable to require that due notice to that effect be given in order that the carrier may have the necessary information upon which to base its demurrage charges and be afforded opportunity to take proper steps to expedite unloading. Manifestly a notice in writing is highly desirable as evidence of the fact that notice was given, and also tends to promote the orderly conduct of business and to prevent unlawful concessions and discriminations that would result from a lax enforcement of the "weather" rule.

It is clearly shown in this case, however, that complainant's failure to serve written notice did not add to the detention of the cars, entail any additional service by the carrier, or hamper it in any way in dealing with the situation. The essential facts which justly entitled complainant to additional free time for unloading are uncontroverted. While we are not to be understood as condemning the tariff provision for written notice as a rule of general application, we find upon the particular facts of record herein that the demurrage charges collected on the shipments were unreasonable.

We further find that complainant made the shipments as described and paid and bore the demurrage charges thereon; and that it has been damaged and is entitled to reparation in the sum of \$2,807, with interest. An order will be entered accordingly.

HALL, Commissioner, dissenting:

In my opinion the demurrage rule requiring written notice within the prescribed free time is not unreasonable for general application and should not be departed from in this case where oral notice was given to a minor employee of defendants after expiration of the free time. A showing as strong can be made in many other cases, and the tendency would be to eventual elimination of the rule. We would then have to decide in each case whether what had been done constituted notice. The carriers would have like opportunity and the door would be open for unlawful discriminations between shippers.

It is not clearly shown that complainant made diligent efforts to unload until the latter part of January, and, following *Pennsa. R. R. Co. v. Kittanning Co.*, 253 U. S., 819, and *Wharton Steel Co. v. Director General*, 59 I. C. C., 613, we should find that the undue detention of these cars did not necessarily result from the frozen state of their contents.

The complaint should be dismissed.

61 I. C. C.

No. 11698.

PARLOR CITY LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, VICKSBURG, SHREVE-
PORT & PACIFIC RAILWAY COMPANY, ET AL.

Submitted November 9, 1920. Decided March 3, 1921.

Rate on wall board, in less than carloads, from Greenville, Miss., to Monroe, La., found to be unreasonable.

H. J. Fernandes for complainants.

D. Lynch Younger for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Complainants are F. A., W. F., F. C., and L. F. Terzia and F. A. Terzia, jr., copartners engaged in the lumber business at Monroe, La., under the trade name of Parlor City Lumber Company. By complaint filed August 4, 1920, as amended, they allege that the rate charged on a less-than-carload shipment of wall board on August 28, 1919, from Greenville, Miss., to Monroe was unreasonable and in violation of the fourth section. Reparation only is asked. Rates will be stated in cents per 100 pounds.

No routing was inserted by the shipper in the bill of lading, and the shipment moved over the Yazoo & Mississippi Valley to Vicksburg and the Vicksburg, Shreveport & Pacific beyond. It weighed 9,030 pounds, and freight charges of \$83.53 were collected at the applicable joint third-class rate of 92.5 cents. Contemporaneously there was in effect a combination rate of 69 cents, made up of a fifth-class rate of 25 cents from Greenville to Vicksburg, and a third-class rate of 44 cents from Vicksburg to Monroe. Defendants admit that the rate charged was unreasonable to the extent that it exceeded this combination rate and express willingness to make reparation to that basis, which is satisfactory to complainants. Defendants stated that the rates in this territory were being revised and in the revision this fourth section departure, which was protected by an appropriate application not heard with this case, would be corrected.

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We find that the rate assailed was unreasonable, and is and for the future will be prima facie unreasonable to the extent that it exceeded or may exceed the aggregate of the intermediate rates to and from Vicksburg and that complainants made the shipment as described.

Upon proof that complainants paid and bore the freight charges we will consider the entry of an order awarding reparation.

61 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1274.
INTERCHANGE SWITCHING AT WICHITA, KANS.

Submitted February 12, 1921. Decided March 26, 1921.

Increased charge for switching at Wichita, Kans., in connection with a line-haul movement of other carriers, proposed by the St. Louis-San Francisco Railway Company, found not justified, and suspended schedules ordered canceled.

A. T. Sullivan, F. E. Clark, and E. E. Carter for respondent.
W. P. Huston for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to take effect on January 5, 1921, the St. Louis-San Francisco Railway Company, hereinafter called respondent, proposes to increase from \$2.50 to \$7 per car its charge for switching carload freight between industries on its line and interchange points with other carriers at Wichita, Kans., in connection with a line haul by the latter. Its charge was \$2 per car for many years prior to August 26, 1920, when it was increased to the present amount following *Increased Rates, 1920*, 58 I. C. C., 220. Upon protest of the Traffic Bureau of the Board of Commerce of Wichita the schedules were suspended until June 4, 1921. The switching charges herein referred to will be stated in amounts per car.

Respondent's tariffs and those of other carriers serving Wichita provide, in general, that the switching charges of connecting lines will be absorbed on competitive traffic. Respondent asserts that approximately 90 per cent of the traffic upon which the increased charge would apply is competitive; and that as to such traffic the charge does not concern shippers because it is absorbed by the line-haul carrier. As to the remainder of the traffic, which is non-competitive and on which shippers would be required to pay the switching charge, respondent asserts that practically every commodity handled at Wichita can be obtained from or disposed of at points on its lines; and that as it is unnecessary for shippers served by it to receive or forward shipments by other lines, they should not, if they elect to avail themselves of that privilege, object to paying

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the proposed charge on the small amount of noncompetitive traffic that would be subject thereto.

Protestant shows that its members purchase various commodities not produced along respondent's lines and distribute part of their products in territory not served by it; and that frequently it is inexpedient to use respondent's line on account of better service by other roads reaching Wichita, or because the transit tariffs of such other carriers on whose lines traffic originates do not authorize re-shipment from Wichita over respondent's line. The record does not establish that industries served by respondent have paid any considerable sums for switching services embraced in the proposed increased charge, but it is urged for protestant that if the suspended schedules become effective they might be required to pay substantial amounts on certain traffic. Should the proposed increased charge become effective protestant apprehends that connecting lines would discontinue absorbing the entire amount.

Further discussion of this phase of the case is unnecessary. A carrier is entitled to reasonable compensation for switching or other services, but is not justified in attempting to restrict traffic to its own lines by making an excessive charge for switching to or from its connections. In a proceeding to determine the propriety of switching charges absorbed by carriers we must consider them as though they were to be charged for by the railroad rendering the service and paid for by shippers. *Switching Absorptions*, 47 I. C. C., 583; *Detroit Switching Charges*, 28 I. C. C., 494.

Prior to publication of the suspended schedules a proposal to increase the switching charge at Wichita was considered by the Western Trunk Line Committee and was disapproved by lines competing with respondent. The switching charge of the Atchison, Topeka & Santa Fe at Wichita is \$2.50, but that of the other lines is not shown. Respondent states that certain of them intend to increase their switching charges at Wichita, but have deferred such action with a view to effecting like increases at all junctions simultaneously.

The average distance for switching movements at Wichita is said by witnesses for protestant to be from 1 to 1.5 miles, and for respondent to be about 3 or 3.5 miles. Respondent failed to furnish information upon which a conclusion could be based as to the extent of the switching service.

Respondent asserts that while there have been marked increases in wages, in the cost of materials, and in freight rates generally, switching charges have been increased but little and are noncompensatory; that a contemplated increase in its switching charges was abandoned upon initiation of federal control; that under the tariff provisions for absorption of switching charges it pays much more

to its competitors than it receives from them; that tests made shortly after federal control terminated disclosed that the average cost of switching at points on its line was not less than \$5 per car; and that at numerous points in Oklahoma, Missouri, Kansas, and Arkansas the charge for reciprocal switching was thereupon increased to \$5, and under *Increased Rates, 1920, supra*, the latter charge was increased to \$7. Respondent also states that when an increase to \$7 was proposed at Wichita a like increase was proposed at a number of other points in Kansas and permitted to become effective. It is not shown whether the switching service at these other points where the charge of \$7 now applies is fairly comparable with that at Wichita.

Exhibits offered by respondent purport to show that without allowance for taxes, rental or hire of equipment, and return on investment, the actual cost of switching at Wichita in November, 1920, was \$6.47 per car. These exhibits, however, can not be accepted as fully substantiating respondent's claims as to the cost of service. They contain items as to which no satisfactory explanation was furnished, some of the figures said to have been taken from reports on file with us can not be verified and others are based on mere estimates. The record indicates that because of a decline in business and of unusually large expenses for engine repairs the month of November, 1920, should not be accepted as a fairly representative test period. Respondent explains that it could not prepare more complete data on account of the short time intervening between suspension of these schedules and the hearing. The hearing, however, was approximately one and one-half months after expiration of the test period selected by respondent. It is quite clear that respondent's present charge for interchange switching at Wichita is too low; but the facts of record do not justify the proposed charge or enable us to determine with certainty what charge would be reasonable. In connection with proposed increases in rates or charges carriers should be prepared to sustain the burden of justification which the law has placed upon them.

We find that the proposed increased charge has not been justified. An order will be entered requiring cancellation of the suspended schedules and discontinuing this proceeding.

61 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1264.
LITHOPONE AND ZINC OXIDE BETWEEN WESTERN
TRUNK LINE POINTS.

Submitted February 2, 1921. Decided April 8, 1921.

1. Proposed cancellation of commodity rates on lithopone and zinc oxide, in mixed carloads, from Mineral Point, Wis., to St. Paul and Minneapolis, Minn., and Kansas City, Mo., found not justified.
2. Proposed cancellation of commodity rates on lithopone and certain other commodities, in mixed carloads, between St. Louis, Mo., Peoria, Ill., Chicago, Ill., and Mississippi River crossings, on the one hand, and Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak., on the other, found justified.
3. Suspended schedules ordered canceled, without prejudice to the publication of schedules in conformity with the findings herein.

J. N. Davis for respondents.

J. H. Tedrow for protestants.

C. H. George for Mineral Point Zinc Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

By DIVISION 3:

By schedules filed to become effective December 20, 1920, respondents propose to cancel commodity rates on lithopone and zinc oxide, in mixed carloads from Mineral Point, Wis., to Kansas City, Mo., St. Paul and Minneapolis, Minn., and on lithopone in mixed carloads with certain other commodities between St. Louis, Mo., Peoria, Ill., Chicago, Ill., and Mississippi River points, on the one hand, and Kansas City, Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak., on the other. The proposed cancellations would leave applicable the fifth-class rates, governed by western classification, which are higher. Upon protest of the Chamber of Commerce of Kansas City, directed against the proposed change in rates from Mineral Point to Kansas City, the operation of these schedules was suspended until May 19, 1921. Rates will be stated in cents per 100 pounds.

Mineral Point is in the southwestern part of Wisconsin on the Chicago, Milwaukee & St. Paul. It takes the Chicago basis of rates. Lithopone is a white pigment used in flat and enamel wall paint and as an inert filler in rubber goods, linoleum, and other commodities. Its chief competition is with white lead and zinc oxide.

Lithopone, in carloads, is rated fifth class in western classification. Prior to June 3, 1919, the fifth-class rate from Mineral Point to Kansas City was 34 cents. On that date a commodity rate on lithopone and zinc oxide, in mixed carloads, became effective. This, as increased in accordance with *Increased Rates, 1920*, 58 I. C. C., 220, is now 30.5 cents, the same as the carload rate on zinc oxide. The fifth-class rate is still applicable on straight carloads of lithopone. This commodity rate was established at the request of shippers of lithopone in Pennsylvania to permit bringing in carloads of that commodity to Mineral Point, where no lithopone is produced, consolidating it there with zinc oxide, and shipping out mixed carloads to western destinations. It was testified that this was necessary to meet the needs of users of lithopone at Kansas City, none of which require a full carload shipment of that commodity. At about the same time mixed-carload rates were also established from Mineral Point to St. Paul and Minneapolis, Milwaukee, Wis., Chicago, and St. Louis. The present and proposed rates to these several destinations are as follows:

Mineral Point to—	Present rate.	Proposed rate.	Mineral Point to—	Present rate.	Proposed rate.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Chicago, Ill.....	9	9	St. Paul, Minn.....	17	1 34
Milwaukee, Wis.....	9	9	Minneapolis, Minn.....	17	1 33
St. Louis, Mo.....	17	17	Kansas City, Mo.....	30.5	1 46

¹ Fifth-class rate.

Respondents do not contend that the present rates from Mineral Point to St. Paul, Minneapolis, and Kansas City are unduly low but maintain that these commodity rates on mixed carloads constitute the only departures from the class basis in the case of lithopone and that the fifth-class rates should be restored in order to put all shippers of lithopone upon the same footing and to remove what might be a source of complaint of undue preference. They state that requests have been made from other shippers, particularly from a shipper at Argo, Ill., which takes the Chicago basis of rates to Kansas City, for a rate on mixed carloads of lithopone and zinc oxide equal to that from Mineral Point. The present rate from Argo is the fifth-class rate of 46 cents. The proposed schedules would equalize the rates from Argo and Mineral Point to Kansas City. The present record does not warrant a finding that the rates now in effect are unduly prejudicial to the shipper at Argo.

The mixed-carload commodity rate from Mineral Point to St. Louis, which is lower than the fifth-class rate, remains unchanged. Protestant contends that this will unduly prejudice manufacturers at Kansas City who compete with St. Louis manufacturers in Mis-

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souri and the southwest. While the nature and extent of this competition is not shown, no reason appears why the mixed-carload commodity rate should be continued to St. Louis and not to Kansas City.

The proposed cancellation of the mixed-carload commodity rates from Mineral Point to St. Paul and Minneapolis was not protested. Respondents offered no justification for increasing the rates to these points from 17 cents to 34 cents other than the statement that the present rates were a departure from the "normal" basis and their existence might prompt shippers at other points to request a similar basis. No claim is made that the present rates are not reasonable *per se*.

The commodities with which lithopone may be shipped at commodity rates between St. Louis, Peoria, Chicago, and Mississippi River crossings, on the one hand, and Kansas City, Omaha, Sioux City, and Sioux Falls, on the other, are paint (dry earth), barytes, ground iron ore, common ground clay, mortar color, whiting, and yellow ochre. These commodity rates are the same in amount as the fifth-class rates. The commodities named are of lower grade than lithopone and are rated class C, in carloads. They move between the points stated, in straight or mixed carloads, on commodity rates lower than class C. The proposed cancellation of the commodity rates on lithopone in mixed carloads with these commodities would not prevent the movement of the mixture nor increase the rates or minimum weights. The amount of each rate is the same, as under the rule applying on mixed carloads the shipper would take the highest-class carload rate applicable, which would be that on lithopone. The present commodity rates are subject to a minimum weight of 40,000 pounds, which is the highest carload minimum weight provided in the classification on any of the specified commodities. These commodity rates on mixed carloads apparently serve no useful purpose and no reason appears why they should be continued.

We find that respondents have not justified the proposed cancellations which would increase the rates from Mineral Point to Kansas City, St. Paul, and Minneapolis, but that they have justified the other proposed cancellations. Respondents will be required to cancel the schedules under suspension, but may, upon not less than five days' notice, file schedules effecting the cancellations herein found to have been justified.

An appropriate order will be entered.

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No. 11676.
NATIONAL BOX COMPANY
v.
MISSOURI PACIFIC RAILROAD COMPANY.

Submitted March 7, 1921. Decided April 2, 1921.

Defendant's charges for special locomotive and train service required in loading logs along its right of way not found to have been or to be unreasonable or unduly prejudicial. Complaint dismissed.

*Luther M. Walter and John S. Burchmore for complainant.
Henry G. Herbel and James M. Chaney for defendant.*

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

CLARK, Chairman:

The issues presented in this proceeding were made the subject of a proposed report by the examiner, recommending dismissal of the complaint, to which no exceptions were filed.

Complainant is a corporation engaged at Natchez, Miss., in the manufacture of boxes, box material, lumber, and veneer. Logs used in its manufacturing operations are cut in the territory adjacent to the two divisions of the Missouri Pacific Railroad extending between Clayton Junction, La., and Tallulah and Collinston, La. Most of the logs are loaded between Newellton and St. Joseph, La., 39 miles and 29 miles, respectively, from Ferriday, La., on what is known as the Valley division. The complaint, filed July 30, 1920, alleges that defendant's charge of \$100 per day of eight hours or fraction thereof, and \$12.50 for each additional hour, for the use of a locomotive in the service of loading logs along the right of way, including the services of engine and train crews, requisite fuel, water, and supplies, and the transportation of complainant's employees while actually engaged in loading operations, is unreasonable. We are asked to prescribe reasonable charges and to award reparation. Effective November 20, 1920, the charge was increased to \$135 per day of eight hours or fraction thereof and \$17 for each additional hour under the assumption that such increase was authorized in *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220.

The complaint also alleges a violation of section 8 of the interstate commerce act on the ground that the charge for loading interstate
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log traffic exceeds that assessed on intrastate traffic in Louisiana, but upon a showing that the intrastate and interstate charges are the same this allegation was withdrawn.

Defendant's tariff provides that the carrier will, at its convenience, and when the service can be performed without interrupting its regular train service or business, furnish locomotive and train service to move log loaders of private ownership on their own wheels for use in picking up logs along its right of way adjacent to branch and light-traveled main lines, and furnish cars for loading such logs, at the charge hereinabove stated. The service consists in the movement of the empty cars, on one of which is placed a log loader owned and operated by complainant, to the point where loading is to begin and the further movement of the cars as required during the course of loading. The charge includes all necessary supplies and the wages of an engineer, fireman, conductor, and two brakemen. It does not include the transportation of the logs, which is paid for by the shipper at the highest rate applicable from any of the points at which the loading of the car is performed to the point of final destination. The log-loading charge is computed from the time set for the engine and train crews to depart from the initial terminal, in this case Ferriday, until returned to the terminal and released, except that when there is a revenue haul from the point where the loading ceases the time ceases when the engine and train crews take charge of the revenue train.

Complainant contends that no charge should accrue during the time required to move the empty cars from the terminal to the point of loading when 10 or more cars are handled at the same time by one engine. Due to the peculiar character of the service these cars can not be handled in regular trains and it is therefore necessary to move them in special trains. The charge for the service is based on the costs accruing from the time the engine and crews are placed at the disposal of the shipper. From the time of leaving the terminal until returned and released, defendant's employees are under the direction of the shipper and can perform no other work. Under the circumstances it is not improper to compute the charge from the time the special service begins.

The principal ground of complaint is the alleged unreasonableness of the charge. Prior to May 15, 1920, this charge was \$66.40 per day of eight hours and \$8.30 for each additional hour. An increase to \$100 per day and \$12.50 per hour was made effective on that date, upon advice from defendant's operating officials that the former charge was insufficient to cover the cost of the service. This was also the charge then maintained by the Yazoo & Mississippi Valley Railroad. At complainant's request defendant submitted at the hearing

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details of the principal items of expense incurred in performing the service for complainant during the period between May 15 and August 31, 1920. Exhibits were submitted showing the wages paid the engine and train crews, the cost of coal, water, and supplies used, engine expense, including allowances for depreciation, interest, insurance, taxes, and repairs, rental of caboose, and a proportion of the cost of superintendence, dispatching trains, and other general items of expense applicable to the operation of freight trains on the Valley division. These figures, including wages paid for approximately three and one-half hours overtime per day, show an average hourly cost during this period of \$11.97.

The increase on November 20, 1920, from \$100 to \$135 per day for services in connection with loading logs was predicated on the general increases, authorized in Ex Parte 74. Such services, however, are of a special character not subject to the increases therein authorized and defendant has therefore agreed to withdraw the present tariff and restore the former charge of \$100. Under the circumstances no consideration need be given to the propriety of the increased charge.

We find that the charge of \$100 per day of eight hours or fraction thereof, and \$12.50 for each additional hour, was not and is not unreasonable. The complaint will be dismissed.

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No. 11771.

MERCHANT SHIPBUILDING CORPORATION, AGENT,
UNITED STATES SHIPPING BOARD EMERGENCY
FLEET CORPORATION,

v.

PENNSYLVANIA RAILROAD COMPANY AND DIRECTOR
GENERAL, AS AGENT.

Submitted February 23, 1921. Decided April 2, 1921.

Defendants' refusal to make allowance to complainant for spotting service at Harriman shipyard, near Bristol, Pa., found not to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Wm. Y. C. Anderson for complainant.

Henry Wolf Bikelé for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

CLARK, Chairman:

The issues here presented were made the subject of a proposed report by the examiner, recommending dismissal of the complaint. No exceptions thereto were filed.

The United States Shipping Board Emergency Fleet Corporation entered into a contract dated September 7, 1917, with the Merchant Shipbuilding Corporation as its agent, for the construction of a shipyard at Harriman, Bucks county, near Bristol, Pa., and the building at that shipyard of certain ships. Thereupon, the Merchant Shipbuilding Corporation, herein termed complainant, proceeded to carry out the contract.

The complainant alleges that since October, 1917, it has performed the interchange switching and spotting service in connection with interstate traffic to and from its plant at Harriman; that defendants have made no allowance to complainant therefor; that Harriman is within the Philadelphia district; that for industries similarly situated in this district defendants either perform the switching and spotting services or make allowances therefor to the industries; and that by reason of the facts alleged, it has paid charges for transporta-

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tion which were and are unreasonable, unjustly discriminatory, and unduly prejudicial, in violation of sections 1, 2, and 3 of the interstate commerce act and of section 10 of the federal control act. We are asked to award reparation covering the cost to complainant of the spotting service performed by it and to require the Pennsylvania for the future either to perform the service without charge in addition to the line-haul rate or to make allowance therefor.

The Harriman plant is situated on the Delaware River adjacent to Bristol and has connections with the Pennsylvania, the right of way of which forms the western boundary of Harriman community. Its area is approximately 89 acres, on which are a large number of structures. A certain few of these structures, since converted to shipbuilding purposes, were originally parts of what was formerly the plant of the Standard Cast Iron Pipe & Foundry Company, hereinafter termed the foundry company. The plant of the foundry company, acquired by complainant as a part of its shipbuilding site, was situated near the bank of the river and had connections with the Pennsylvania over a siding that extended in a southeasterly direction a distance of about 2,700 feet from the right of way of the latter to a point north of the plant, from which there were two principal spurs leading to points of loading and unloading.

The total trackage, including the siding and spurs, was approximately 10,000 feet. The Pennsylvania performed at the line-haul rate switching and spotting service for the foundry company once a day and apparently continued to render such service until about December 4, 1917, up to which date the foundry company, with the consent of complainant, continued operating in order to complete its contracts. No intraplant switching was done by or for the foundry company. Certain of the foundry company's structures were demolished, others were altered, and numerous additional buildings, together with 12 shipways, were erected by complainant. The foundry company's spur tracks were by various changes adapted to the uses of the shipbuilding plant and additional trackage was installed by complainant. The plant trackage, all of standard gauge, was thus increased to 12.5 miles.

The interchange with the Pennsylvania is made a short distance outside of the northwestern end of the plant area. It is conceded by defendants that there is nothing in the physical layout of the plant or plant tracks to prevent the Pennsylvania from doing the switching and spotting work.

During the early stages of construction of complainant's plant the Pennsylvania performed the switching and spotting of cars within the plant. In July, 1917, complainant rented from the Pennsylvania two locomotives, with which it undertook to perform

the switching of inbound and outbound traffic from and to the interchange tracks before mentioned. Subsequently it purchased four additional locomotives. For a time the Pennsylvania continued to perform some of the switching to and from points within the plant, but, beginning about the latter part of 1917, all such switching was assumed, and has since been performed, by complainant. In addition to the interchange switching, complainant's locomotives were employed extensively in intraplant operations. At the date of hearing one locomotive was in use by complainant.

Complainant's principal traffic consists of inbound shipments of coal and of fabricated steel, lumber, and other materials for the construction of ships. The inbound shipments from October 1, 1917, to September 30, 1920, aggregated 16,086 cars; and the outbound shipments during the same period 1,180 cars. From the figures of record showing the receipt of loaded cars, by months, it appears that the number ranged from 311 for October, 1917, to 1,168 for May, 1918, and that since December, 1918, the number has very materially diminished, the total number received in September, 1920, being 51 cars. Inbound cars generally are switched to storage yards, of which there are eight, and there unloaded. Subsequent movements within the plant are generally made in cars owned by complainant. The record shows that the distances to the storage yards from the Pennsylvania tracks range from 800 to 7,200 feet, the average distance being 4,125 feet.

Complainant is asking for an allowance for one placement of its inbound cars at each of its principal points of unloading. Further, it maintains that the movement of outbound as well as inbound cars, either loaded or empty, between the interchange tracks and the principal points of unloading should not have been at its expense; that by reason of having incurred that expense the line-haul rates were and are unjust and unreasonable; and that reimbursement should be made by defendants.

Defendants never expressly refused to perform the switching and spotting service for complainant. Complainant contends, however, that the establishment of interchange tracks on defendants' right of way and the failure of defendants to increase their facilities in the vicinity of complainant's plant, taken in connection with the leasing and purchase of locomotives by complainant from defendants, were tantamount to a refusal by defendants to perform the service. The contention that defendants' facilities were inadequate to meet the demands made thereon by complainant's inbound traffic is particularly stressed. Each day's arrival of cars was placed within complainant's plant and the empty cars were removed by the Pennsylvania so long as it performed the service. One loco-

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tive was thus employed, but additional locomotives could be and were called for as occasion demanded. At no time prior to the filing of the complaint herein was any protest made by complainant directed to the adequacy of this service, nor were defendants asked to provide any different or more extensive service than that described. So far as appears defendants were at all times ready and willing to comply with any reasonable demand on the part of complainant for additional service. Complainant was obliged to operate its plant with all possible speed. In order to do this it was necessary that loaded cars be switched into the plant from, and the empty cars returned to, the tracks of the Pennsylvania at times during the day that best suited complainant's convenience and to combine that service with the movement of cars from place to place within the plant. The record shows that the assumption of the switching and spotting service by complainant was prompted by these considerations rather than by any inadequacy of the service or facilities afforded by defendants.

At the hearing the Pennsylvania offered thereafter to perform the service of placing cars at unloading points within the plant and of removing therefrom the loaded or empty cars, provided this could be done under its direction and control and without interference on the part of complainant, and, in case of interference, that placement be considered as having been accomplished at point of interference. Complainant, however, is unwilling to accept this offer, but proposes instead that the proffered service consist of daily scheduled movements or that movements be preceded by reasonable notice as to when they will be made. No legal obligation, however, rests upon the carrier to perform switching and spotting service solely at a shipper's convenience, and this, in substance, is what complainant desires. Further, it is well settled that a shipper is not entitled to an allowance from the carrier for a service which the carrier is ready and willing to perform and which the shipper performs because it is not convenient for it to permit the carrier to perform. *Car Spotting Charges*, 84 I. C. C., 609, 617.

Moreover, the facts of record establish that what may have been a reasonable terminal spotting service in the case of the foundry company and in the early stages of construction at the Harriman plant became, by virtue of changed circumstances and conditions, relatively unreasonable.

Though there may be no affirmative obligation upon defendants to perform the spotting services under the line-haul rates, they may not practice unjust discrimination or undue prejudice by making allowances to other shippers who are competitors of complainant provided substantially similar circumstances and conditions at com-

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petitors' plants are shown to exist. *Pittsburgh Forge & Iron Co. v. Director General*, 59 I. C. C., 29, 33. Complainant admits that it has no competitors. Allowances are paid by the Pennsylvania to the American Bridge Company at Edge Moor, Del., on carload revenue shipments of coal and coke; and to the Midvale Steel & Ordnance Company at Wilmington, Del., and to the Tindel Morris Company at Eddystone, Pa., on all carload revenue freight, except coal and coke, as to which these respective industries perform the terminal switching service; but no evidence was introduced to show that the circumstances and conditions at the industries named are similar to those at complainant's plant. An exhibit of defendants' shows 175 industries on the Pennsylvania-Eastern Lines, which do all of their own spotting with their own power and without allowance.

We find that the refusal of defendants to make an allowance to complainant for the service of spotting cars at points of loading and unloading within complainant's plant was not and is not unreasonable, unjustly discriminatory, or unduly prejudicial.

The complaint will be dismissed.

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No. 11450.

CAIRO BOARD OF TRADE

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 11, 1920. Decided April 2, 1921.

Rates on grain, in carloads, from points in Iowa, Nebraska, and Missouri to Cairo, Ill., found not to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Ray Williams for complainant.

A. P. Humburg, James M. Chaney, and H. G. Herbel for Illinois Central Railroad Company and Missouri Pacific Railroad Company.

W. H. Grumley for Mobile & Ohio Railroad Company.

J. B. McGinnis for Memphis Merchants' Exchange and *Walter R. Scott* for Board of Trade of Kansas City, Mo., interveners.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

DANIELS, Commissioner:

This case was submitted upon complainant's exceptions to the proposed report of the examiner.

Complainant is a corporation representing the interests of its members at Cairo, Ill. By complaint filed May 1, 1920, it alleges that the rates on grain, in carloads, from points in Illinois, Iowa, Nebraska, and Missouri to Cairo were unreasonable, unjustly discriminatory, and unduly prejudicial as compared with the rates to St. Louis, Mo., East St. Louis, Ill., and Memphis, Tenn. The establishment of joint rates to Cairo not exceeding the rates to St. Louis or East St. Louis by more than 2.5 cents per 100 pounds is asked. The Memphis Merchants' Exchange and the Board of Trade of Kansas City, Mo., intervened. Rates are stated herein in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Cairo, about 150 miles south of St. Louis and 169 miles north of Memphis, is an important grain market competing with St. Louis and Memphis in the purchase of grain in Illinois, Iowa, Nebraska, 41 I. C. C.

and Missouri, and in the sale of grain in southeastern and Mississippi Valley territories and in Arkansas and Louisiana, hereinafter collectively referred to as the territory of destination. It is an important distributing market. Practically all of the grain which moves into Cairo is ultimately shipped beyond, principally to the southeast. During the period from January 1, 1914, to July 1, 1920, approximately 98 per cent of the 92,712,644 bushels of oats received in carloads at Cairo was shipped out to the territory of destination, the difference representing less-than-carload shipments from Cairo and grain used in the manufacture of mixed feed at that point.

Flat rates apply into and out of St. Louis and Memphis under which grain can be shipped to those points from the territory of origin named and subsequently reshipped to the territory of destination at equal through rates, the inbound rates to Memphis being 7.5 cents over the rates to St. Louis and the outbound rates from Memphis being 7.5 cents under the rates from St. Louis. The rates on grain to Cairo proper are generally made by adding to the St. Louis-East St. Louis rates the proportional factor of 5 cents beyond to Cairo. The rates from Cairo to the territory of destination are 2.5 cents under the rates from St. Louis to the same destinations. Transit is permitted at Cairo under tariffs providing a proportional rate of 2.5 cents for the haul from St. Louis to Cairo on shipments originating in the northwest and moving via Cairo to the destination territory. Cairo dealers must avail themselves of the transit arrangement in order to compete upon through rates equal to those applying through St. Louis and Memphis.

While the complaint attacks only the rates to Cairo proper, what complainant seeks are flat rates to Cairo equal to the rates ultimately charged up to that point on through traffic and which, added to the rates beyond, will make the same through rates as apply on like traffic handled at St. Louis and Memphis, thus effecting the equalization of markets without the inconvenience incident to the transit arrangement at Cairo. We have repeatedly held that it is not sufficient to consider the rates to an intermediate market, nor alone the rates from such market if the question of discrimination between markets is to be determined, but that there must be consideration of the entire rate from the point of production to ultimate destination.

Complainant admits that by the use of transit on practically all grain received Cairo is afforded substantial rate equalization with St. Louis and Memphis. It contends, however, that Cairo grain dealers are subjected to inconvenience and expense because of the necessity of using transit. Complainant points out that grain moving into St. Louis or Memphis is free to move out to any destination

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via any carrier, while to receive the benefit of the transit arrangement at Cairo and to obtain the same through rate as applies on grain moving via the St. Louis and Memphis markets, grain moving into Cairo must move out over the same line which brought it in.

Complainant urges that Cairo grain dealers are therefore required to determine the actual destination of their purchases and over what railroad the grain will be shipped out when sold, in order to give routing instructions to shippers, and that under such circumstances the market can not properly function. Complainant also urges that the Cairo market can not compete with Memphis and St. Louis in the sale of grain to millers and rehandlers in the Mississippi Valley who desire to use transit, for the reason that the tariffs of the southern lines provide for only one transit, thus making it necessary for the purchaser in the Mississippi Valley to secure his grain from St. Louis or Memphis rather than from Cairo in order to be entitled to transit. Under the present adjustment western grain must move through St. Louis to the Cairo market in order to be entitled to the transit arrangement. The St. Louis terminals are said to be frequently congested, resulting in serious delays which might be avoided if joint rates were established to Cairo and made applicable via other junction points.

For defendants it is contended that the granting of the complainant's prayer would result in extensive and serious rate reductions; that the rates via the Illinois Central to Cairo locally would be reduced in amounts from 1 to 2.5 cents; that the rates to Cairo locally would be the same as the rates to Cairo on shipments destined beyond; that there would be very substantial reductions via other roads from points in Iowa; that whatever reductions are made on grain will apply to grain products, of which there is a large movement; that a reduction in the through rates from Iowa points on the Illinois Central and on other roads north of the line from Memphis eastward to Grand Junction, Tenn., would result, the effect of which would be to make the combination through Cairo lower than the combination through East St. Louis or Memphis; and that it would decrease the rates via the Illinois Central not only to points north of the Ohio River, but also to a very considerable territory south thereof.

Omaha, Nebr., and Kansas City take the same rate on grain to St. Louis, but on grain to the southeast Kansas City has long enjoyed a differential of 1 cent under Omaha. The Board of Trade of Kansas City urges that if complainant's prayer for rates to Cairo, 2.5 cents over St. Louis, is granted without a readjustment in the rates from Kansas City and Omaha, the 1-cent differential in favor of Kansas City against Omaha will be destroyed.

We have frequently called attention to the desirability of establishing in-and-out rates, where practicable, in lieu of transit arrangements. It is obvious, however, that every point can not be made a rate-breaking point, and upon the record in this case we are not warranted in requiring the carriers to reduce their inbound rates to Cairo for the purpose of equalizing that market with St. Louis and Memphis. Except as hereinafter noted, substantial equalization appears to have been effected at Cairo through the medium of transit. We are of opinion, however, that defendants have not justified restriction of the outbound movement of the grain from Cairo to the rails of the carrier which brings the traffic into that point. We think that Cairo is entitled to the same advantages in this respect as St. Louis and Memphis, and defendants will be expected promptly to revise their tariffs so as to permit the free movement of grain into and out of Cairo to the same extent that it is permitted at St. Louis and Memphis in so far as the outbound movement from Cairo may be made via a different line than that which brought the grain to Cairo. If such a revision is not made, complainant may bring the matter to our attention.

So far as the rates from points in Illinois to Cairo are concerned, our jurisdiction to prescribe intrastate rates for the future, under the issues presented in this case, terminated with federal control. Confining our findings to the interstate rates assailed in the complaint, which, as stated, are those to Cairo proper only, we find that those rates are not unreasonable, unjustly discriminatory, or unduly prejudicial. An order will be entered dismissing the complaint.

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INVESTIGATION AND SUSPENSION DOCKET No. 1301.¹
LIVE STOCK LOADING AND UNLOADING CHARGES.

Submitted March 18, 1921. Decided April 2, 1921.

Proposed increased charges for loading and unloading ordinary live stock at public stockyards at Chicago, Ill., and other western points, and proposed absorptions of such charges by railroad common carriers engaged in the transportation of such live stock, found justified. Orders of suspension vacated and preceeding discontinued.

Ralph M. Shaw and Brown & Boyle for Union Stock Yard & Transit Company of Chicago, Ill.; *Luther M. Walter* for Kansas City Stock Yards Company, St. Louis National Stock Yards, Oklahoma City Stock Yards, and Wichita Stock Yards; *R. D. Rynder* for Sioux City Stock Yards Company and St. Joseph Stock Yards Company; *H. K. Crafts* for Fort Worth Stock Yards Company; and *Norris Brown* for Union Stock Yards of Omaha, Nebr.

S. H. Johnson for Chicago, Rock Island & Pacific Railway Company and other western lines; *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company and other western lines; and *James Webster* and *H. H. Johnson* for railroad lines eastbound from Chicago, Ill.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELA

By DIVISION 2:

By schedules filed to become effective in March, 1921, the Union Stock Yard & Transit Company, of Chicago, Ill., proposed to increase its charges for loading and unloading ordinary live stock at its yards, and various common carriers by railroad proposed to absorb such increased charges and to provide for the establishment or absorption of similarly increased charges at other stockyards at various western points. By appropriate orders the schedules have been suspended until June 29, 1921, and later dates.

The stockyards here concerned respectively perform for the respondent common carriers engaged in the transportation of ordinary live stock the service of loading and unloading included in the transportation by virtue of section 15 (5) of the interstate commerce act,

¹This report also embraces Investigation and Suspension Docket No. 1312, Live Stock Loading and Unloading Charges.

and the charges for the service are accordingly paid out of the line-haul rates. For many years past charges for the respective services of unloading and loading have been 50 and 75 cents at Chicago, \$1 per car deck at South St. Paul, Minn., \$1 per car at Denver, Colo., and 50 cents per car at the other yards. The proposed charge is \$1 per car for each service at all yards.

Except for variations in the size of the properties and in the volume of traffic, the arrangement of facilities and the character of operations in the particular service are much the same at the several yards. Incoming shipments are switched alongside so-called chute pens, into which the live stock is unloaded. From those pens, unless promptly removed by the consignees, such of the stock as is not disabled is transferred to adjacent relief pens, beyond which point the service for which the carriers are chargeable is not deemed to go. An exception is found at Sioux City, Iowa, where relief pens are not provided and where the service charged for is confined to the transfer between cars and chute pens. The operation of unloading includes the opening of car doors, removal of "bull bars" placed within the cars to prevent pressure of cattle against car doors during transit, removal of partitions in cars containing mixed shipments, placement of chutes between cars and chute pens, driving out able-bodied animals, and more or less commonly the removal of dead and crippled animals. The latter, more particularly hogs and sheep, are handled by means of so-called "crip carts," are tagged for identification, and are removed to special pens. The work of unloading is somewhat increased in the case of double-deck cars. The operation of loading, while necessarily varying in some details and confined to a generally smaller volume of traffic, is more or less the reverse of that of unloading.

The cost data submitted to justify the proposed increased charges are based upon the labor, accounting, and facilities purporting to have been devoted to the particular service during the year 1920, the figures for Chicago alone showing a separation of cost per car as between loading and unloading. In addition to labor costs, the items include supervision, accounting, electric lighting of the loading and unloading docks for night work, depreciation of or repairs to the facilities used, cleansing and disinfecting the facilities, fire and liability insurance, loss and damage, taxes, and the like, allocated to the service in question. These data, which need not be reviewed in detail, show direct labor costs ranging from 63.62 cents per car at St. Joseph, Mo., to 99.67 cents at Chicago. Other stated items of cost increase the figures in varying degrees. At all the yards the average cost of performing the service of loading and unloading is

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shown as having to a greater or less extent exceeded \$1 per car, and there is nothing of record to suggest that the costs are now appreciably diminishing.

Prior to the filing of the suspended schedules a committee representing the western carriers, after a somewhat extended investigation, recommended a uniform absorption of 85 cents per car, which would approximate the 50-cent charge, plus the 25 per cent increase under general order No. 28 of the Director General of Railroads, plus the 35 per cent increase in western territory pursuant to *Increased Rates, 1920*, 58 I. C. C., 220. The carriers, however, recognizing that the cost of the service is generally higher than that figure, agree to the proposed increased charges, and believe that the same charges should apply at all points.

We here express no opinion concerning the precise point at which the loading and unloading service for which the carriers are responsible begins or ends or concerning the precise extent to which the exhibited items are properly chargeable to the carriers as part of the transportation service. We confine our finding to the necessities of the case, namely, that upon all the facts of record the proposed increased charges and absorptions have been justified. The orders of suspension will be vacated accordingly and the proceeding discontinued.

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No. 10826.

INTERMEDIATE RATE ASSOCIATION

v.

DIRECTOR GENERAL, ABERDEEN & ROCKFISH
RAILROAD COMPANY, ET AL.

Submitted December 3, 1920. Decided March 29, 1921.

Rates from points of origin east of the Rocky Mountains to so-called inter-mountain territory found not to be unreasonable, unduly prejudicial, or otherwise unlawful. Complaint dismissed.

J. B. Campbell and *C. O. Bergan* for complainant.

S. H. Love, *W. S. McCarthy*, and *H. W. Prickett* for Commercial Club and Chamber of Commerce of Salt Lake, Traffic Bureau of Utah, and Traffic Service Bureau of Utah; *Warren Stoutnour* for Public Utilities Commission of Utah; *George B. Graff* for Boise Commercial Club and Boise Chamber of Commerce; *A. L. Freehafer* and *Leonard Way* for Public Utilities Commission of the State of Idaho; *J. W. Goodman* for Montana Freight Rate Association; *H. B. Schaefer* for Montana Railroad Commission; *F. A. Jones* for Arizona Corporation Commission and Corporation Commission of New Mexico; *E. H. Walker* for Reno Chamber of Commerce; *Fred W. Feldt* for Public Utilities Commission of Nevada; *W. D. Wall* for San Jose Chamber of Commerce; *Seth Mann* for San Francisco Chamber of Commerce; *E. P. Gregson* for Associated Jobbers of Los Angeles and Los Angeles Chamber of Commerce; *G. J. Bradley* for Merchants & Manufacturers Association of Sacramento; *Frank M. Hill* for Fresno Traffic Association; *S. J. Wettrick* and *J. D. Mansfield* for Seattle Chamber of Commerce and Commercial Club; *O. T. Helping* for San Diego Chamber of Commerce; *Helping & Campbell* for Retail Dry Goods Association of the State of California; *J. N. Teal* and *J. H. Lothrop* for Portland Traffic & Transportation Association; *Jay W. McCune* for Tacoma Commercial Club and Chamber of Commerce; and *Harry Dickinson* and *Dayton & Denious* for Denver Transportation Bureau.

F. H. Wood, *C. W. Durbrow*, *B. W. Scandrett*, *H. A. Scandrett*, *R. J. Hagman*, *J. L. Coleman*, and *J. G. McMurtry* for defendants; and *F. S. Reigel* for Southern Railway Company.

W. H. Chandler for Boston Chamber of Commerce, Associated Industries of Massachusetts, New England Traffic League, and

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Massachusetts Chamber of Commerce; *J. C. Lincoln* for Merchants Association of New York; *Geo. P. Wilson* for Philadelphia Chamber of Commerce; *Donald O. Moore* for Pittsburgh Chamber of Commerce; *Frank E. Williamson* for Buffalo Chamber of Commerce; *E. G. Wylie* for Greater Des Moines Committee; *H. R. Brashear* for St. Louis Chamber of Commerce; *F. S. Keiser* for Commercial Club of Duluth; *George N. Brown* and *J. S. Marvin* for National Automobile Chamber of Commerce; *W. G. Norvell* for Parke, Davis & Company; *E. S. DePass* for Carnation Milk Products Company; *Geo. W. Pound* for Musical Industries Chamber of Commerce of America; *Butler, Lamb, Foster & Pope* by *E. S. Ballard* for Rubber Association of America; *Frederick L. Ballard* for Cambria Steel Company; *Thomas B. Moore* for Michigan Manufacturers Association, Ford Motor Company, Henry Ford & Son, Buhl Stamping Company, and Grand Rapids Cabinet Company; *Edgar J. Rich* for Associated Industries of Massachusetts; *T. A. McGrath* for Minneapolis Traffic Association; *J. H. Beek* for St. Paul Association of Public & Business Affairs, Minneapolis Traffic Association, and Omaha Chamber of Commerce; *C. E. Childe* for Omaha Chamber of Commerce; *F. W. Burton* for Rochester Chamber of Commerce; *R. W. Poteet* for Stanley Works; *Charles W. Nash* for Albany Chamber of Commerce and others; *Mason Manghum* for New England Traffic League, New Bedford Board of Commerce, and Virginia Corporation Commission; *L. B. Boswell* for Quincy Freight Bureau; *E. H. Berg* and *H. Mueller* for Minneapolis Traffic Association; *Frank Lyon* for Luckenbach Steamship Company; *A. H. Russell* for Clarke-Woodward Drug Company; *Duncan S. Murray* for H. N. Cook Belting Company, A. J. & J. R. Cook, and Central Leather Company; *H. M. Wade* for Redwood Manufacturers Company; *A. F. Lemberger* and *Charles Clifford* for Motor Car Dealers' Association of San Francisco; *Dave F. Smith*, *Charles Clifford*, and *A. F. Lemberger* for Los Angeles Motor Car Dealers' Association; *M. E. Van Dive*, *Bishop & Bahler*, and *R. T. Boyd* for Oakland Chamber of Commerce, California Manufacturers' Association, and Pacific Coast Ship Builders Traffic Association; *O. B. Baldwin* for United Shoe Repairing Machine Company; *W. F. Price* for J. B. Williams Company and Mennens Company; *William P. Libby* for Plymouth Cordage Company; *O. L. Hilliard* for F. W. Woolworth Company; *Harry P. Masman* for Charleston Traffic Bureau; *E. J. Tarok* for New York Board of Trade & Transportation; *P. M. Neigh* for Wheeling Chamber of Commerce; *Chamberlin & Fuller* for Cleveland Chamber of Commerce and others; *Travis D. Campou* and *Charles P. Thompson* for Furniture Manufacturers' Association; *C. A. Brantley*

for Libby, McNeill & Libby and National Cannery Association; *E. H. Berg* for St. Paul Association of Public & Business Affairs; *Frank A. Larish* for Michigan Paper Mills Traffic Association; *A. E. Singleton* for Whitaker-Glessner Company; *J. A. Brough* for Crane Company; *R. W. Ropiequet* for East Side Manufacturers' Association; *Ralph Merriam* for National Association of Chewing Gum Manufacturers and Wm. Wrigley, jr., Company; *J. H. Tedrow* for Chamber of Commerce of Kansas City; *H. R. Brashear*, *W. T. Days*, and *J. L. Power* for St. Louis Chamber of Commerce; *H. C. Barlow* for Freight Traffic Committee of the Chicago Association of Commerce; *Herman Mueller* for Missouri River cities, Duluth, Minneapolis, and St. Paul commercial associations; *B. L. Benfer* for Foundry Supply & Manufacturers Association; *C. A. Butler* for Anaconda Copper Mining Company; *W. C. Mitchell* for United States Leather Company of New Jersey and N. R. Allen Sons Company; *A. R. Symons* for Hazard Manufacturing Company; *Albert Nelson* for Buick Motor Company; *F. M. Renshaw* for Ohio State Industrial Traffic League and Cincinnati Chamber of Commerce; *H. B. McNeely* for Indianapolis Chamber of Commerce; *C. H. Rodehaver* for National Basket Fruit Package Manufacturers' Association; *G. Van Wormer* for W. R. Allen's Sons Company; *James J. Wait* for Hibbard, Spencer & Bartlett and Chicago Association of Commerce; *William J. Pitt* for Paint Manufacturers' Association of the United States, National Varnish Manufacturer's Association, and Philadelphia Paint, Oil & Varnish Club; *W. O. Allen* for Kerr Glass Manufacturing Company and Alexander H. Kerr & Company; *C. S. Bather* for Rockford Manufacturing & Shippers Association and National Furniture Traffic Association; *F. W. Boltz* for National Petroleum Association; *R. B. Coapstick* for Indiana State Chamber of Commerce; *A. B. Cronk* for Public Service Commission of Indiana; *George Dowling* and *Edgar A. Leveille* for Chicago Piano Manufacturers' Association; *W. P. Tingley* for Huntington Chamber of Commerce; *Francis W. Jones* for Manufacturing Perfumers Association of the United States; *R. H. Watkins* for J. R. Watkins Company and others; *H. E. White* for Minneapolis Street & Machinery Company and Twin Cities Forge & Foundry Company; *F. R. Levins* for Russ Parker Company; and *J. T. Ryan* for Southern Traffic League and North Carolina Industrial Traffic League.

REPORT OF THE COMMISSION.

CLARK, Chairman:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions were filed by the parties.

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This case involves the class and commodity rates to Pacific coast cities and so-called intermountain territory from all the country east of the Rocky Mountains.¹ It differs from previous cases in which rates from and to these territories were considered in that now the rates to the intermountain territory are not higher than to the coast, and there is no contention that they should be higher. The question is whether the rates to intermountain territory should be lower than to the coast, and if so to what extent. Except as noted rates are stated in cents per 100 pounds.

Before taking up the present situation, it is well to refer to the time when, on account of coast-to-coast water competition, the carriers maintained lower rates to the coast than to intermediate points in intermountain territory. In June, 1914, the Supreme Court rendered its decision supporting the conclusions we had reached in the *Intermountain Rate Cases*² regarding relief from the long-and-short-haul rule of the fourth section of the act, and the carriers took in hand the making of appropriate readjustments. The Panama Canal had just been opened for traffic, injecting new features into the situation, and after the decision of the Supreme Court was announced representatives of the carriers suggested that the commodities which moved from the territory east of the Rockies to the coast might be divided into three groups, known as schedules A, B, and C.

Schedule A included commodities on which rates had not been seriously affected by water competition and on which the rates were to be adjusted in conformity with the long-and-short-haul rule. This list comprised about 115 carload items.

Schedule B was a list of commodities which were adapted for transportation by water and which originated in some volume on the Atlantic seaboard, but on which it was thought possible to maintain rates sufficiently high to enable the carriers to comply with our findings without serious sacrifice of revenue. On these commodities the long-and-short-haul rule was to be observed as to rates from points on and west of the Missouri River only. From Chicago, Ill., and points between Chicago and the Missouri River, the rates to intermediate points were to be made not more than 7 per cent higher than to the coast; from points east of Chicago to and including Pittsburgh, Pa., not more than 15 per cent higher than to the coast; and from points east of Pittsburgh, not more than 25 per cent higher than to the coast. This list comprised approximately 350 items.

¹ It is difficult to describe the destination groups or territories by geographical boundaries, but as representative of points on the Pacific coast we may take Seattle, Wash., Portland, Oreg., and San Francisco and Los Angeles, Calif., and, as representative of points in intermountain territory, Spokane, Wash., Reno, Nev., and Phoenix, Ariz., on the west, and Butte, Mont., Salt Lake City, Utah, and Albuquerque, N. Mex., on the east.

² *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329; *City of Spokane v. N. P. Ry. Co.*, 21 I. C. C., 400; and *Intermountain Rate Cases*, 234 U. S., 476.

Schedule C was a list of important commodities which originated in large volume on the Atlantic seaboard and were especially adapted for water transportation, and on which it was not thought possible at that time to maintain the then existing rates to the coast in face of the new competition via the Panama Canal. As to this list, which comprised about 90 items, the carriers asked for further hearing. Their petition was granted and hearing was held in October, 1914. As a result we authorized the establishment to the coast, on schedule C commodities, of the rates which the carriers then proposed, while the rates to intermediate points were dealt with as follows: In those instances in which the rates from the Missouri River to the coast were 75 cents or more, the rates to intermediate points might not exceed the rates to the coast. In those instances in which the rates to the coast from the Missouri River were less than 75 cents, the rates to intermediate points might be higher than to the coast, but might not exceed 75 cents. The rates from Chicago to intermediate points might be 15 cents higher, from Pittsburgh 25 cents higher, and from New York, N. Y., 35 cents higher, than from the Missouri River. *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, and 34 I. C. C., 13.

This adjustment of commodity rates continued practically unchanged until March 15, 1918, when all departures from the long-and-short-haul rule in westbound transcontinental rates were removed under our decisions in *Reopening Fourth Section Applications*, 40 I. C. C., 35, and *Transcontinental Rates*, 46 I. C. C., 236. We there found that due to conditions brought about by the war water competition between the Atlantic and Pacific ports was no longer a compelling force, and held that the maintenance of lower commodity rates to the coast than to intermediate points unduly preferred the coast. We not only denied relief from the long-and-short-haul rule but expressed the view that the rates in certain instances at least might be graded.

These decisions required no change in the class rates, as they were already lower to the intermediate points than to the coast. No change in schedule-A commodity rates was required, because they were in conformity with the long-and-short-haul rule, but the rates on perhaps 40 of the 115 items in schedule A were made somewhat lower to the intermediate points than to the coast. In this revision increases were made in some of the rates to the coast. Schedule-B and schedule-C commodity rates were made to conform to the long-and-short-haul rule. Quite substantial increases were made in some of the schedule-B rates to the coast, but the schedule-C rates to the coast, as a rule, were increased only to the level of the then existing rates to intermediate points. These new commodity

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rates, before being published, were submitted to us in fifteenth section applications, and received our approval in *Transcontinental Commodity Rates*, 48 I. C. C., 79, where the changes are more fully described. The carriers sought to cancel all less-than-carload commodity rates, but authority therefor was denied, and no increases were permitted except such as were necessary to bring the rates to the coast up to the level of the rates to intermediate points. All the rates were later increased in accordance with general order No. 28 of the Director General of Railroads.

In the spring of 1918, shortly after the revised rates referred to were established, intermountain shipping interests took up with the Railroad Administration the question of graded rates for all commodities; that is, lower rates to intermountain territory than to the coast. After hearing before the Chicago western district freight traffic committee in July, 1918, the matter was referred to a joint committee, composed of the members of the San Francisco district freight traffic committee and the Portland district freight traffic committee, with directions to work out in detail and submit for consideration a complete system of graded rates. This joint committee will be hereinafter called the coast committee. Following extensive investigation and study, a plan of readjustment was prepared and agreed to by the members of the coast committee, and referred to the Chicago committee for consideration and transmission with recommendations to the Director General's director of traffic. In the meantime, the Director General and his director of traffic visited Spokane and indicated to its citizens that graded rates would be accorded intermountain territory. However, the Chicago committee failed to act on the coast committee plan and the director of traffic eventually took the matter out of its hands and referred it to us under section 8 of the federal control act, with a request that we give him our recommendations. Apparently because of the prospects of an early return of the roads to their owners, the request was withdrawn, but finally, at the suggestion of the director of traffic, the matter was brought to our attention by the filing of the complaint in this case.

Complainant is a voluntary association of shippers' organizations and state commissions in intermountain territory. In terms, violations of sections 1, 2, and 3 of the act to regulate commerce are alleged; but the principal complaint is brought under section 3, namely that the Pacific coast is given unreasonable preference, and intermountain territory is subjected to undue prejudice and disadvantage, because the commodity rates are not graded so as to afford intermountain territory the full benefit of its location nearer the east. The class rates are satisfactory to complainant. They are
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graded and, except for recent general increases, have been in effect for a number of years. However, as to the class rates, the complaint states:

It may be necessary, in order to make a perfect and consistent grade of the aforementioned commodity rates, to change the volume and relation of the class rates from said eastern defined territory to said intermountain section and said Pacific coast points, and for that purpose, and that purpose only, your petitioner herein alleges that the said class rates are unreasonable and in violation of sections 1, 2, and 8 of the act to regulate commerce.

The complaint also seeks the establishment of properly related joint through class rates from all the territory east of Chicago to all points in Montana, Idaho, Utah, Wyoming, and New Mexico and all other points in intermountain territory which now pay combination rates.

A hearing was had on the complaint at Salt Lake City, Utah, in November, 1919, at which shippers and commercial organizations at the terminals intervened to contest the relief sought. The coast committee plan was made part of the record and fully discussed by the parties. It had the almost unqualified support of the intermountain interests, and if adopted, would practically satisfy the complaint. The Director General and the carrier corporations vigorously opposed its adoption, and later appointed a committee of railroad traffic officials to propose a readjustment which they would be willing to make in case we should find undue prejudice against intermountain territory. Such a proposal was prepared and submitted to us late in December, 1919. It was understood by all concerned that this proposal, though submitted during federal control, was primarily on behalf of the carrier corporations, and that it looked forward to the then prospective period of private control and operation.

The proposal of the carriers contemplated a complete readjustment of the class and commodity rates, giving effect to the grading principle; but entailed the disruption of important commodity rate relationships as between eastern points of origin and the cancellation of many commodity rates, which latter matters were beyond the original scope of the proceeding. Various eastern shippers and commercial organizations, when they became aware of the changes proposed, petitioned for leave to intervene and be heard before any action was taken on the proposal. The case was accordingly assigned for further hearing at New York, Chicago, Spokane, and San Francisco, during May, 1920, and numerous shipping interests intervened and offered evidence generally in opposition to the proposal.

Since the hearings in this case were concluded the rates have been increased, generally 33½ per cent, in accordance with *Increased Rates*, 1920, 58 I. C. C., 220. The term "present rates," as used in this

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report and the appendixes has reference to rates in effect at the time of the hearings.

The record shows that intermountain territory is paying the same commodity rates on most of its traffic from the east as does the Pacific coast. Practically none of the commodity rates is graded. The items on which the carload commodity rates to intermountain territory are the same as to the coast constitute a long list, including principally, all schedule-B and schedule-C commodities. It is only on the commodities, in carloads, mainly in schedule A, and shown in Appendix No. 1 hereto, that the commodity rates are graded. Some typical examples of the grading on these commodities are shown in Appendix No. 2. It will be noted that from all the territories of origin the differences in favor of intermountain territory range from 5 to 19 cents, depending upon the volume of the rate. In each instance the difference in favor of intermountain territory is the same, or substantially the same, regardless of the point of origin. The differences in distance in favor of the principal points in intermountain territory range from 250 to 800 miles. All intermountain territory is treated practically as a unit, and generally speaking there is no further grading of rates except accidentally, where rates are made independently in western territory, or where the Mississippi River, Chicago, or St. Paul, Minn., combinations are lower than the joint through rates. In other words, as to destination points the graded rates to intermountain territory are blanketed east for several hundred miles, in many instances to points in Idaho, Utah, Montana, Arizona, and New Mexico, until they meet the independently made rates in western territory or the combination rates based on Mississippi River, Chicago, or St. Paul. Generally speaking, there are no joint all-rail class or commodity rates from official or southern classification territories to the west, except to the coast and to the intermountain blanket.

There is evidence of record respecting competition between the coast and intermountain territory, offered to prove that the rates to the latter if relatively too high result in undue prejudice. There are a few commodities, such as ship chandlery, which are used at the coast and not used in intermountain territory, but, generally speaking, intermountain territory and the coast are interested in the same commodities. The fact that any improper rate relationship that might exist, would result in prejudice to intermountain territory is clear. Defendants and certain shipping interests that would be adversely affected by a change in rates contend that complainant's evidence on this point is too meager. However, thriving communities, all in the same general section of the country, striving for population, industry, and business growth, may not need elaborate evi-

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dence to show that they are entitled to relief if the rates are not properly related.

We have seen that the present system of commodity rates is the outgrowth of water competition to the coast and the absence of such competition at the intermediate points. Complainant asks an adjustment which entirely disregards water competition and which is based solely on distance and other transportation conditions. For years the efforts of the carriers have been to confine the large list of trans-continental commodity rates to Pacific coast traffic, and generally it has been only because of the long-and-short-haul provision that the rates were extended to intermediate points. Complainant seeks to have this list reflected farther into the interior, and the rates to the interior put on a basis lower than to the coast, and to this end contends that the present rates to the coast, subject to some increases on schedule-C commodities, should be accepted as reasonable and that they should be graded down for application to intermountain territory, which method of readjustment, as we shall see, was proposed by the coast committee.

The Pacific coast interests urge that the rates to the coast should not be graded down for application to intermountain territory, contending that substantially all the rates now reflect, and should continue to reflect, the effects of water competition. They contend further that while they can protect themselves by using the water routes almost exclusively, the rail rates should be held down in order to provide an adequate movement of loaded cars westbound to be used in the shipment of Pacific coast products eastbound; also to enable the rail carriers to secure traffic to protect their revenues and maintain their financial standing without laying burdens on other traffic to make up what they would lose by withdrawing in large part from the coast business. Although during the war period coast-to-coast water transportation was practically nonexistent, it has again manifested itself. The water rates are generally low as compared with the rail rates and considerable traffic is moving by water. At the time of the hearings the sailings from the Atlantic to the Pacific ports averaged about two per week. It is predicted that within a year or so the steamships will be moving a large tonnage, comparable with that handled prior to the war, and making serious inroads upon the revenues of the transcontinental carriers unless it should happen that the latter are then moving all the traffic they can profitably handle. The increases authorized in *Increased Rates, 1920, supra*, will tend further to divert traffic to the water lines unless they raise their rates to about the same extent. The rail carriers, as soon as they begin to feel or fear the effects of the water competition, may again petition us for fourth section relief to meet the situation, and with that as a premise the coast cities ask us to consider whether it is desirable to readjust

the rates at this time and again later. They suggest that the present structure or any structures of the kinds proposed in this case will be undermined by the ocean rates, and require radical revision, and that a readjustment in the interim will only mean two rate disturbances instead of one.

Complainant answers the Pacific coast interests by saying that although there is coast-to-coast water transportation there is no real competition; that on the part of the rail lines there is not that "striving for something which another is actively seeking and wishing to gain," which is the Supreme Court's definition of competition. *United States v. Union Pacific R. R. Co.*, 226 U. S., 61, 87. They contend that there is now and for an indefinite future period is likely to be sufficient traffic for both the water lines and the rail lines and that there exists no necessity for the rail carriers trying to keep traffic away from the water lines so long as the former are receiving all they can efficiently and profitably handle.

The Pacific coast interests contend that if we should find a revision warranted we should fix reasonable rates to the intermediate points without tying them to the rates to the coast, so that when it becomes advisable to reduce the rates to the coast to meet water competition that could be done without involving the intermediate points. They suggest that if the rates to intermediate points are at that time reasonable, and if the rates to the coast are made no lower than water competition requires and are "reasonably compensatory for the service performed," no undue prejudice will then be caused by the intermediate rates, and the intermountain interests can have no cause for complaint under the law.

Defendants support the coast interests' principal contention and ask that the complaint be dismissed. They submitted a plan of revision only because they were requested to do so.

Defendants suggest that complainant, in supporting the coast committee plan, is asking severe reductions in rates without showing that the existing rates are unreasonable. It is true, as a technical matter, that the complaint raises mainly a question of relationship, but broadly speaking the case as a whole involves the question of what would be a reasonable and nondiscriminatory adjustment of rates.

Defendants say that the evidence respecting the reasonableness of the present rates is so meager that the record affords no ground for reducing any of them, and that there is no good reason for seriously considering the proposed plans of readjustment. Complainant urges a broader view, namely, that the coast committee plan largely recommends itself as a reasonable one and therefore proves that the present adjustment is unreasonable. Complainant also contends that the rates to the coast during past periods of water competition must have been

compensatory; that they were increased after water competition ceased; that complainant is now willing that they be further increased, particularly so far as schedule-C commodities are concerned, before being used as a basis for rates to intermountain territory; that if the base rates to the coast are reasonable, reasonable rates to intermountain territory, for hauls several hundred miles shorter, should be appreciably lower, just as the rates from Buffalo, N. Y., and Pittsburgh to the Pacific coast and intermountain territory are lower than from the Atlantic ports; and that through rates from the east to intermountain territory, as high as the combinations on the Mississippi River, Chicago, or St. Paul, must fall of their own weight if they do not grade by reasonable progression into the rates to the coast.

We shall now consider briefly the several plans of rate revision that have been proposed.

THE COAST COMMITTEE PLAN.

The coast committee plan assumes the nonexistence of rail and water competition for transcontinental traffic, the rates proposed being based on distance and other transportation conditions. The present eastern groups are retained, but the intermountain blanket is broken up. All the rates are based on a first-class rate of \$4 from the Atlantic seaboard to the Pacific coast. The various first-class rates proposed are shown in detail in Appendix No. 3. The class rates are considerably lower than those now in effect, but the more important movements are on commodity rates. All less-than-carload commodity rates are to be canceled, resulting in substantial increases. Some of the present and proposed less-than-carload rates are shown in Appendix No. 4. Any carload commodity rates which are equal to or higher than class rates are to be canceled. Schedule-A and some of schedule-B commodities have been the least subject to water competition. The plan, generally speaking, assumes that the rates on these commodities to the coast are reasonable, and proposes that they be graded down for application to intermediate territory, based on the relation of first-class rates. For instance, if the first-class rate from New York to Spokane is 94 per cent of the first-class rate to the coast, the commodity rates to Spokane are to be 94 per cent of the commodity rates to the coast. The changes proposed in schedule-A and schedule-B commodity rates are principally reductions to intermountain territory. On schedule-C commodities the plan contemplates that the rates to the coast be increased somewhat before grading in accordance with the percentage formula. Examples of proposed commodity rates are shown in Appendixes Nos. 5, 6, and 7. Taking from 600 to 700 carload shipments which moved to Salt Lake City

during the first seven months of 1919, the revenue at the proposed rates to Salt Lake City would be \$522 per car, as against \$633 per car if the shipments moved to San Francisco at the proposed rates to that city, the difference between the per car earnings being \$111 for an additional haul of 745 miles through a desert and mountainous territory.

To show that the present commodity rates to the coast are reasonable and that they should be graded down for application to intermediate territory, complainant compares the average earnings on the hypothetical shipments to San Francisco with the average earnings on all freight of the various lines operating west of Chicago. When analyzed there is little difference between the ton-mile and car-mile earnings on the hypothetical shipments and the average for all traffic on the lines selected. Complainant also points out that since our decision in *Transcontinental Rates*, *supra*, decided June 30, 1917, there have been increases in rates to the coast other than those provided in general order No. 28. The increases computed by complainant on 45 important commodities are shown below:

From—	Ranges of increase.	Averages of increase.
	<i>Per cent.</i>	<i>Per cent.</i>
Atlantic seaboard territory.....	44 to 93	65
Buffalo-Pittsburgh territory.....	33 to 83	53
Chicago territory.....	22 to 72	41
Mississippi River territory.....	5 to 56	27

While the coast committee plan does not specifically cover all the points of destination involved in the complaint, it fixes most of the important rates. One of the few criticisms that complainant makes of this plan is that it is not fair to Idaho. As shown by Appendix No. 3, practically the same rates are proposed from eastern points to Boise, Idaho, as to Spokane; Reno, Nev.; and Phoenix, Ariz., the difference in distance in favor of Boise being about 100 miles. Complainant contends, however, that the distance to Boise should be compared with that to Spokane alone, in which event the difference would be several hundred miles. At present Boise takes Spokane rates from points east of Chicago.

Defendants vigorously oppose the grading of the rates back from the coast, resulting in reductions in many rates fixed or approved by us in previous cases. If the rates to an interior point like Salt Lake City were taken as a base and graded up to the coast there would be no such reductions. They point out that the proposed rate of \$4 from New York to the coast is 62.5 cents below the present rate. In *Railroad Commission of Nevada v. S. P. Co.*, 19 I. C. C., 238, we 61 I. C. C.

fixed \$3.50 as a reasonable first-class rate from New York to Reno. With the 25 per cent increase this rate became \$4.375, or 37.5 cents more than the rate here proposed to the coast, the additional distance being 244 miles, involving transportation over the Sierra Nevadas. There would also be severe reductions in rates to intermediate points. In 43 instances the commodity rates from New York to Salt Lake City would be less than the present rates to Denver, Colo. The plan would indirectly result in reductions to certain points in the middle west, especially to Denver, Missouri River points, and other points now taking combination rates based on the Mississippi River, Chicago, or St. Paul. Denver has intervened and is asking that it be given the same percentage reductions as Salt Lake City. Any reduction in rates to Denver would doubtless entail reductions to intermediate territories.

Defendants oppose a definite relationship between commodity and class rates, which would result in the publication of commodity rates on the same articles to intermountain territory as to the coast. Although complainant assumes the nonexistence of water competition it adopts substantially the present list of commodity rates to the coast, many of which would never have existed but for water competition. Extension of this list to intermountain territory would result in many new commodity rates to points in the middle west. At present there are 666 commodity rates from St. Louis, Mo., to the coast, while there are only 428 commodity rates to Salt Lake City, 265 to Denver, and 126 to Kansas City, Mo.

The coast committee plan was proposed during federal control. It is impossible to say what effect its adoption would have on the revenues of individual lines. The reductions in class rates would be in part compensated by the cancellation of less-than-carload commodity rates, but the reductions in carload commodity rates to intermediate territory would not be offset by the increases proposed on certain commodities to the coast, especially as the movement to intermountain territory is heavier than to the coast. However, complainant is willing to have the rates proposed by the coast committee increased if necessary. It is the principle of the plan rather than the exact rates proposed that complainant desires to have established.

THE UTAH PLAN.

The Utah plan results in substantially the same rates as the coast committee plan, except for minor differences in the rates to intermountain territory. The Utah interests take as a base the coast committee first-class rate of \$3.20 from Omaha, Nebr., to San Francisco and apply it from Chicago to Reno and from Pittsburgh to Salt Lake City for substantially equal distances, considering that trans-

portation conditions in the far west are less favorable than in the east. Similarly the rate proposed by them from Pittsburgh to Reno is equal to the rate from Chicago to San Francisco. Rates from and to various other points are computed in a similar manner. The same rates are proposed to Phoenix, Spokane, and Reno, while those to Montana common points and Globe, N. Mex., are the same as to Salt Lake City. The proposed rate from Omaha to Salt Lake City is 80 per cent of the rate from Chicago to that destination. This percentage relationship is in harmony with our decision in *Commercial Club, Salt Lake City, v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218. The present rates from Chicago to Salt Lake City also divide 80 per cent west of Omaha. The commodity rates would be controlled by the class rates in the same manner as in the coast committee plan.

THE IDAHO PLAN.

The Idaho interests propose a mathematical plan. They take the coast committee's first-class rate of \$4 from the Atlantic to the Pacific coast and \$1.90 from Denver to Salt Lake City and with these rates as known quantities project a curve which indicates the rates for any desired distance. The plan results in a decreasing rate of progression, with the minimum spread between groups at the greatest distance. It has the advantage of grading rates in closer relation to distance but can not be adopted as a practical plan of rate making.

THE CARRIERS' PLAN.

The carriers contend that the present rates are not unduly prejudicial. Therefore, the plan submitted by them is presented for adoption only in the event that the present rates are found unlawful. The plan presents certain questions not within the issues raised by the complaint, but it was submitted responsive to request from the examiner and was the subject of evidence at the hearings.

The plan is based on the present first-class rates from Missouri River, Mississippi River, Chicago, Cincinnati, Ohio, Pittsburgh, and New York to Salt Lake City and on the present first-class rate from Chicago to the coast. The rates to Salt Lake City from the first three territories mentioned are those approved in *Class and Commodity Rates to Salt Lake City*, 32 I. C. C., 551, increased under general order No. 28. The rates to Spokane, Reno, and Phoenix from Chicago, Mississippi River, and Missouri River are made by adding to the Salt Lake City rates one-half of the difference between the rates to Salt Lake City and those to the coast. The Chicago rate to the coast is graded down to obtain rates from the Mississippi and Missouri rivers, resulting in some reductions. On traffic to the coast and intermountain territory the following differentials over Chicago are 61 I. C. C.

proposed: From Cincinnati 25 cents; from Pittsburgh 40 cents; and from New York 65 cents. The present differentials to the coast are 12.5 cents, 25 cents, and 37.5 cents, respectively. The carriers point out that the present differential New York over Chicago on traffic to Salt Lake City is \$1.09, and that the 65-cent differential proposed is not much more than one-half of the first-class rate from New York to Chicago. In *Railroad Commission of Nevada v. S. P. Co.*, 19 I. C. C., 238, the first-class rates prescribed from Cincinnati, Pittsburgh, and New York to Reno were 15 cents, 30 cents, and 60 cents, respectively, higher than the first-class rate prescribed from Chicago. We fixed like rates to Phoenix in *Maricopa County Commercial Club v. S. F., P. & P. Ry. Co.*, 19 I. C. C., 257. All of these rates were increased under general order No. 28. Except for some minor reductions from the middle west the proposed class rates are considerably higher than the present rates. The present first-class rates from New York to the coast and to Spokane would each be increased 27.5 cents. The present and proposed rates are shown in greater detail in Appendix No. 8.

At present there are joint class rates from the southeast to the coast and to intermountain territory relatively the same as those applying from official classification territory. However, prior to federal control all the class rates were based on the local rates to and beyond the Ohio and Mississippi river crossings. The carriers are willing to continue joint rates to California points, but suggest the cancellation of joint rates to the north coast because the hauls to the north coast are considerably longer from the southeast than from official classification territory and because the joint rates to the north coast will have the effect of reducing rates to Montana and North Dakota, where combination rates are now applicable. The increases proposed are substantial.

The rates from points east of Chicago to points west of El Paso, Tex., and east of Phoenix are based on the Mississippi River or El Paso combination with rates to Phoenix as maxima, and with the further provision that via Ohio River and lower Mississippi River crossings and from seaboard territory via steamship and Gulf the lowest Mississippi River combinations are to be applied as maxima. On traffic to the California coast groups G and H are to be eliminated and group-F^a rates are to apply therefrom, except that group-J territory is to be extended to the Colorado-Kansas and Colorado-Nebraska state lines, with the provision, however, that the few points in

^aGroup F embraces a narrow strip of territory closely adjacent to and including the Missouri River and the line of the Kansas City Southern from Kansas City to the Gulf of Mexico. Group G embraces the states of Kansas and Nebraska and also a narrow strip on the eastern border of the state of Colorado, not including the so-called Colorado common points. Group H includes most of the states of Oklahoma and Texas. Group J, generally speaking, embraces the eastern portion of Colorado except the narrow strip included in group G.

Nebraska which are located on the Union Pacific northwest of Julesburg, Colo., are to be included in group J. The present rates from Texas to the north coast and to Spokane are the same as those from Chicago, the rates from both territories of origin to Spokane being lower than to the north coast. The proposed rates from Texas to the coast and to Spokane are the same, the distance being about the same. It is asserted that the rates from Chicago to Spokane are depressed to meet the St. Paul combinations.

Defendants failed to submit a complete plan as to commodity rates, but set out specifically a few items which they consider typical. Their intention was to submit a final proposal when the principles involved are passed upon. They propose to cancel all less-than-carload commodity rates, urging that the present commodity rates are unnecessary. Practically all of them are due to water competition. There are less-than-carload commodity rates to other points in western territory, but they are limited in number. These commodity rates are generally the same to intermountain territory as to the coast. Their cancellation would result in increases ranging from 30 to 100 per cent, assuming that the proposed class rates were established. In *Transcontinental Commodity Rates*, *supra*, the carriers proposed to cancel these less-than-carload commodity rates. The question was discussed at pages 87 and 88 of the report, and the cancellation was not permitted.

The carriers also propose the cancellation of carload commodity rates on high-grade traffic, of which drugs, medicines, and chemicals, automobiles, rubber tires, and musical instruments are said to be typical. They show that in other sections of the country the articles named move on class rates. It is conceded for defendants that some of the articles in the list should be accorded commodity rates. The proposed cancellation would result in substantial increases. On many of the articles referred to commodity rates were prescribed by us. *City of Spokane v. N. P. Ry. Co.*, 19 I. C. C., 162, pages 180 to 217.

It is proposed that commodity rates on agricultural and hand implements, bags, and iron and brass beds be graded between Salt Lake City and the coast in a "normal way"; that rates on agricultural implement parts, ammunition, canned goods, bar iron and steel, iron and steel castings, fruit jars, and certain other commodities be graded only slightly, the grading to depend upon and differ with the commercial and competitive conditions that are to be met. There are no commodity rates on these articles to Salt Lake City which are not reflections of the coast rates. The rates to the coast were made either with regard to water competition or in view of local production. Specific rates on certain of these commodities are shown

in Appendix No. 9. It is not proposed to grade the rates on commodities such as poultry food, stock food, silica sand, and salt. In other words, no change is proposed in the present level of these rates which, it is said, is very low.

In determining commodity rates from points east of Chicago the carriers have taken the rates from Chicago as a base, adding thereto the same differentials for the haul from points farther east as were proposed in connection with the class rates which would apply in the absence of commodity rates. The proposed commodity rates are, therefore, controlled by the class rates, although defendants objected to that feature of the coast committee plan. The western carriers believe it unnecessary to carry the same commodity rates to the north coast from the southeast as from official classification territory. The southern lines, or at least some of them, are not in favor of the cancellation of joint rates from their territory. They desire through rates in line with those from official classification territory. There apparently is some controversy as to divisions.

It is proposed to eliminate all carload commodity rates to Salt Lake City which are due solely to coast rates based on water competition or other special circumstances. In other words, Salt Lake City would receive commodity rates only when commercial or transportation conditions that affect Salt Lake City traffic were deemed such as to justify them. The carriers would continue combination rates from official classification territory to far western points where they now exist. In *Boston Chamber of Commerce v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 230, we refused to require the establishment of joint class rates from the east to Colorado and Utah common points.

Defendants concede that the adoption of their plan would mean a large increase in revenue.

The evidence in opposition to the carriers' plan deals principally with the amounts of the increases and the possible effect of the rates upon business and commercial conditions. Extensive evidence was offered to show that the present rates on several commodities, especially automobiles, rubber tires, and chewing gum, are reasonable, and the proposed rates would be unreasonable.

Shippers at Boston, Mass., New York, Philadelphia, Pa., Richmond, Va., and various other points in seaboard territory, oppose the radical increase proposed and seek a continuance of the present rates and the rate relationships that exist between the seaboard territory and other territories. It is becoming increasingly difficult for industrial interests in the east to do business on the Pacific coast in competition with industries in the middle and far west. The rate situation is having a tendency to compel the eastern industries to erect manufacturing plants and branch houses in the coast

states. While this trend is naturally objectionable to the established eastern manufacturers, the building up of the west as a manufacturing and primary distributing territory is not undesirable from the standpoint of public interest. We have little, if any power, and no inclination, to adjust rates for the purpose of retarding or promoting progress and development of a particular section, but aside from any economic considerations, if water competition is to be disregarded, there is much to be said in favor of increasing the differentials against central freight association, eastern trunk line, and New England territories. Traffic and transportation conditions would furnish justification for increasing the differentials.

Duluth, Minneapolis, and St. Paul give their unqualified approval to the carriers' proposal, notwithstanding the severe increase that would be entailed, because it would increase the disadvantages under which their eastern competitors are now laboring in shipping to the far west. Kansas City, St. Louis, and Indianapolis, Ind., would receive somewhat the same advantages over eastern competitors as would Duluth, Minneapolis, and St. Paul, but they vigorously oppose the proposal, because of the increased rates that they would be charged. Rochester, N. Y., in seaboard territory, 69 miles east of Buffalo, N. Y., protests the proposed increased differentials for seaboard territory over Buffalo-Pittsburgh territory, and asks that Rochester be taken out of the seaboard territory, if the carriers' proposal is adopted, and be given rates which will reflect its proximity to Buffalo. Des Moines, Iowa, objects to being continued in the Mississippi River territory, and asks that it be given rates that more nearly represent its location. Shippers at points in the southeast oppose the cancellation of their class and commodity rates to the north coast.

The Whitaker-Glessner Company, engaged in the manufacture of black and galvanized sheets, range boilers, and various other articles of iron and steel, at Portsmouth, Ohio, in Pittsburgh territory, 107 miles east of Cincinnati, protests the proposed increased differential over Chicago territory and asks that it be accorded a rate less than the Pittsburgh rate and one that will reflect its closer proximity to Chicago.

The Cambria Steel Company at Johnstown, Pa., in seaboard territory, 75 miles east of Pittsburgh, protests the proposed increased differentials for seaboard territory over the Buffalo-Pittsburgh territory, and asks that Johnstown be accorded the same differentials over Pittsburgh on iron and steel to the coast and intermountain territory as apply to practically all other western points. The carriers offered no evidence on this point. No reason appears why the same differentials should not apply as on traffic to the west in general,

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but no order can be entered as the matter is not within the scope of this proceeding.

The cancellation of less-than-carload commodity rates is highly objectionable to many shippers, especially if the proposed increased class rates are approved. The proposal to increase carload commodity rates is strongly opposed by the shippers which are interested in the commodities affected. Shippers of automobiles, rubber tires, chewing gum, drugs and medicines, etc., protest the proposal to cancel their carload and less-than-carload commodity rates and to apply the substantially increased class rates instead.

CONCLUSIONS.

Complainant's allegations with respect to the propriety of the present commodity rates have not been sustained. Speaking of these rates, as a whole, no undue prejudice to intermountain territory appears, and we can not say that the rates should be graded. Conditions warrant the carriers, in their discretion, in continuing the present blanket adjustment on many and perhaps most of the commodities that move in considerable volume. The ships that now ply between the Atlantic and Pacific ports are not nearly so numerous and the tonnage now moving is not nearly so heavy as during the period that followed the opening of the canal and preceded our entry into the war, but it is, nevertheless, certain that there is now sufficient transportation by water and ample indication that it will further develop and increase, to warrant the belief that within a comparatively short time it will reach a point where it will be felt in a serious loss of tonnage by the rail lines unless they have available appropriate measures to meet the situation. There is not that strife and rivalry that formerly characterized the coexistence of these two modes of transportation to and from the Pacific coast, but as between these separate sets of carriers there is that natural and well-grounded fear of each other's ascendancy and power, sufficient, especially in view of the existing movement by water, to warrant a finding that there is actual competition at the present time. Energetic business competitors in their struggle for success always look beyond the present and are justified in keeping themselves fortified against each other's activities, even before the situation becomes serious. It is mainly for these reasons that the commodity rates have been held to their present level and largely for these reasons that the carriers are now opposing a disturbance of the present adjustment. Moreover, it was for these reasons, and in the interest of rate stability, that the suggestions as to grading made in our report in *Transcontinental Rates, supra*, were not couched in more positive and forceful language. There is less reason now than then for grading. We are

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not now prepared to say that the rail carriers can well be put in a position to lose or to risk losing a considerable portion of their present and prospective traffic to and from the coast by having their rates increased in order that there may be a differential in favor of intermountain territory. An increase to the coast would be necessary unless we found the present rates to be not less than reasonable maxima. On this record we can not say that this is so. Moreover, rates for long hauls, particularly on low-grade traffic, are often blanketed over extensive territories, and even if the rates to the coast were found to be reasonable maximum rates it would not necessarily follow that all of them should be graded. In view of the special conditions under which these commodity rates were established and have been maintained, we can not fairly, unless we find them to be reasonable maximum rates, spread their effects farther into the interior. It is understood, of course, that these findings apply to the general rate structure. A somewhat different conclusion might be reached with respect to a specific commodity rate constituting an exception to the general adjustment. The fact that rates from certain interior eastern points of origin to the Pacific coast are lower than from the Atlantic seaboard is discussed in the record although not definitely brought in issue by the pleadings. This grouping of eastern points of origin applies to the intermountain territory as well as to the Pacific coast terminals. The grouping is not a source of injury to complainant. It reflects an adjustment of long standing and no opinion is expressed as to the propriety or impropriety thereof.

What we have said above has special reference to perhaps most of the items in schedule C. However, there are, no doubt, some schedule-C items and a number of schedule-B items as to which it is not likely that there will be any important competition for a considerable period and on which it may not be worth while to continue the present rate relationships. Such items could very properly be singled out by the carriers and graded. The record does not enable us to do it. Defendants have not carried out the grading process to the extent that we had hoped. The examiner suggested that in addition to the foregoing some items in schedule A and schedule B might well be put on the class basis. In Appendix No. 10 is a new scale of class rates which he proposed and which, on the whole, are slightly higher than those proposed by the coast committee, plus 33 $\frac{1}{4}$ per cent. He proposed that if this scale be put into effect we might well authorize the cancellation of less-than-carload commodity rates; also of carload commodity rates on various luxuries and nonessentials, in fact rates on high-grade freight in general which usually moves at class rates, such as automobiles, auto-

trucks which should be rated second class in western classification territory as they are in the other classification territories; rubber tires and tubes; rubber clothing; chewing gum; musical instruments; talking machines; drugs, medicines, and chemicals, excepting heavy and low-grade articles such as epsom salts and so-called industrial chemicals; and a number of other commodities. He thought that cancellation of these commodity rates would not be attended by the severe increases that characterize the carriers' plan, and that apparently interested shippers should have no reasonable grounds for objection, particularly in view of the fact that the present commodity rates on many of the items are attributable to policies and conditions of bygone days, or exist only because of former water competition that may not have been and perhaps never will be very compelling.

Methods of rate making based upon theories that are no longer tenable or upon conditions that no longer exist should be discarded. When distances are relatively great, and when transfer at rate-breaking points is not attended by unusual costs, the combination basis, using local rates, ordinarily is abnormal and unscientific and often discriminatory. The railroads should be regarded more and more as one national system, and the time may not be far distant when we should proceed to the establishment of joint through class and commodity rates, lower than the combinations of locals, between practically all points in the country. We have generally recognized that through rates should be less than the combinations, but prompted chiefly by considerations of paramount public interest, growing out of the revenue conditions of certain carriers, we have refrained from and even declined absolute condemnation of combinations. In this connection the *Boston Chamber of Commerce Case, supra*, may be referred to as an example. We are now vested with specific authority to initiate rates that will protect revenues, and where carriers will suffer depletion of revenue by reason of the establishment of new joint rates, appropriate measures can be taken for their protection. We are not, however, prepared, in view of all the circumstances, to now require the joint through rates here prayed for.

Since the record in this case was made up many and far-reaching changes in economic and transportation conditions have occurred. Conditions are unsettled. The future of transportation by rail and by water is uncertain. The suggested comprehensive plans for readjusting all of the rates over this large territory and the evidence submitted for and against each plan tread far outside the limits of the complaint. We deemed it advisable to hear what the parties desired to submit regarding a possible readjustment that would do justice to all. We have discussed some of those matters rather fully in this

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report. The record and the discussion should be helpful in paving the way for a final settlement of this vexed situation. The extent of the territory that would be affected by a readjustment of all of these rates is indicated by the interests for which appearances are shown. Their interests are diverse and their contentions are often diametrically opposed. These questions can not be settled justly by accepting the views of those on either extreme.

The complaint will be dismissed.

EASTMAN, Commissioner, concurring:

This complaint was brought at a time when war conditions had well-nigh eliminated service by water between the Atlantic and Pacific coasts. Within the past few months the situation has changed radically in this respect, and under present circumstances I agree that no plan for graded rates which has been proposed in this proceeding can wisely be adopted. I think it also a sound conclusion that upon the present record and in view of the changing conditions no adjustment of the rates to intermountain territory can well be attempted.

This disposition of the case, however, leaves unanswered various questions which must eventually be faced. If water competition justifies rates from the Atlantic coast to the Pacific coast no higher than to intermountain territory, why should the rates from inland points like Pittsburgh, Cleveland, and Chicago be lower to the Pacific coast than the water-compelled rates from the Atlantic ports? In other words, why should the rates be graded at the eastern end and blanketed at the western? And what conditions exist at these eastern inland points which compel a parity of rates as between intermountain and Pacific coast destinations which are hundreds of miles apart?

The future consideration of these and similar questions is in no way foreclosed, I take it, by the dismissal of the present complaint.

COMMISSIONER ESCH did not participate in the disposition of this case.

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APPENDIXES.

APPENDIX No. 1.

Items on which the present carload commodity rates are graded.

Certain agricultural implements.	Iron prison work.
Aluminum and aluminum articles.	Iron safes.
Boxes and crates and box and crate material.	Phosphate of lime.
Brass, bronze, and copper goods.	Fruit juices.
Various sorts of canned goods.	Certain forest products.
Carbon black.	Malted milk.
Oilskin hats and clothing.	Musical instruments.
Poultry coops.	Edible nuts.
Depilatory (mixture of sodium sulphide and quicklime).	Creosote.
Cotton thread and darning cotton.	Certain paper and paper articles.
Electric batteries.	Plumbers' goods, such as bathtubs, sinks, etc.
Incandescent lamps.	Pumps and spraying machines.
Certain explosives.	Rubber hats, caps, and gloves.
Ice-cream freezers.	Self-heating sadirons.
Dried fruits and vegetables, such as dates and figs.	Talking machines and accessories.
Church and theater furniture.	Pitch and tar.
Plate glass.	Tin boxes, pails, and cans.
Glue.	Rubber tires and tubes.
Heating and cooking apparatus.	Lumber and warehouse trucks.
Iron tanks.	Trunk slats.
Iron stable fittings.	Baby buggies and gocarts.
Iron vault furniture.	Aluminum wire, rope, and cable.
	Wood pulp.
	Plate and sheet zinc.

APPENDIX No. 2.

Statement showing grading or differences in favor of intermountain territory at present commodity rates.

[Rates are stated in cents per 100 pounds.]

Commodities.	Rate comparison.	From Atlantic seaboard territory.	From Chicago territory.	From Missouri River territory.
		Cents.	Cents.	Cents.
Certain agricultural implements.....	To Pacific coast.....	231.5	204	179
	To intermountain territory.....	219	191.5	166.5
	Difference in favor of intermountain territory.	12.5	12.5	12.5
Canned goods.....	To Pacific coast.....	194	169	150
	To intermountain territory.....	181.5	156.5	137.5
	Difference in favor of intermountain territory.	12.5	12.5	12.5
Certain forest products.....	To Pacific coast.....	115	95	80
	To intermountain territory.....	110	90	75
	Difference in favor of intermountain territory.	5	5	5
Certain explosives.....	To Pacific coast.....	350	325	306.5
	To intermountain territory.....	331.5	306.5	287.5
	Difference in favor of intermountain territory.	18.5	18.5	19

APPENDIX No. 3.

First-class rates proposed by the coast committee compared with present rates and distances as used by the coast committee.

[Rates are stated in cents per 100 pounds.]

From—	To Pacific coast.		To Spokane, Reno, and Phoenix.		To Boise.		To Missoula.		To Butte.		To Salt Lake City.	
	Dist. ¹	Rate.	Dist. ²	Rate.	Dist.	Rate.	Dist.	Rate.	Dist.	Rate.	Dist.	Rate.
Group A (Atlantic seaboard):	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Present rates.....	3,125	452.5	2,525	437.5	2,720	437.5	2,541	437.5	2,420	430	2,431	425
Proposed rates.....	3,125	400	2,525	375	2,720	375	2,541	355	2,420	345	2,431	345
Group B (Buffalo-Pittsburgh):												
Present rates.....	2,685	450	2,389	400	2,273	400	2,100	400	1,979	400	1,990	405
Proposed rates.....	2,685	380	2,389	355	2,273	355	2,100	335	1,979	325	1,990	325
Group C (Cincinnati - Detroit):												
Present rates.....	2,516	437.5	2,124	381.5	2,076	381.5	1,945	381.5	1,825	381.5	1,746	376.5
Proposed rates.....	2,516	370	2,124	345	2,076	345	1,945	325	1,825	310	1,746	310
Group D (Chicago):												
Present rates.....	2,217	425	1,835	362.5	1,811	351.5	1,632	344	1,511	331.5	1,522	331.5
Proposed rates.....	2,217	350	1,835	320	1,811	320	1,632	300	1,511	285	1,522	285
Group E (Mississippi River):												
Present rates.....	2,174	412.5	1,930	350	1,699	335	1,674	344	1,552	331.5	1,407	309
Proposed rates.....	2,174	340	1,930	310	1,699	300	1,674	300	1,552	285	1,407	270
Group F (Missouri River):												
Present rates.....	1,777	375	1,437	312.5	1,323	294	1,234	275	1,112	262.5	1,027	250
Proposed rates.....	1,777	320	1,437	285	1,323	285	1,234	265	1,112	245	1,027	235
Group J (Denver):												
Present rates.....	1,364	325	1,255	300	911	235	999	274	877	212.5	614	192.5
Proposed rates.....	1,364	280	1,255	260	911	225	999	230	877	210	614	190

¹ Distance to Portland.

² Distance to Spokane.

³ From St. Paul and Sioux City, \$2.75; from Kansas City, Omaha, and St. Joseph, \$2.84.

⁴ To Reno and Phoenix, \$2.625.

APPENDIX No. 4.

Statement from complainant's exhibit to show present less-than-carload commodity rates on representative commodities, compared with class rates proposed by the coast committee, western classification ratings being shown.

[Rates are stated in cents per 100 pounds.]

Commodity.	From Chicago.		From New York.	
	Present l.c.l. commodity rates.	Proposed class rates.	Present l.c.l. commodity rates.	Proposed class rates.
Blowers and drills (second class):	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
To San Francisco.....	267.5	298	312.5	340
To Salt Lake City.....	267.5	242	312.5	293
Dry laundry bluing (second class):				
To San Francisco.....	267.5	298	312.5	340
To Salt Lake City.....	267.5	242	312.5	293
Boot and shoe findings (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	255	312.5	345
Brass pots and kettles (1½ times first class):				
To San Francisco.....	401.5	525	469	600
To Salt Lake City.....	401.5	427.5	469	517.5

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Statement from complainant's exhibit, etc.—Continued.

Commodity.	From Chicago.		From New York.	
	Present I.C.C. com- modity rates.	Proposed class rates.	Present I.C.C. com- modity rates.	Proposed class rates.
Brushes, vegetable fiber (second class):	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
To San Francisco.....	267.5	298	312.5	340
To Salt Lake City.....	267.5	242	312.5	293
Bottle caps (first class):				
To San Francisco.....	234	350	274	400
To Salt Lake City.....	234	285	274	345
Carpets and rugs (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	285	312.5	345
Clocks, value \$10 (first class):				
To San Francisco.....	294	350	344	400
To Salt Lake City.....	294	285	344	345
Cotton clothing (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	285	312.5	345
Cotton shirts and dresses (first class):				
To San Francisco.....	294	350	344	400
To Salt Lake City.....	294	285	344	345
Cotton hosiery and underwear (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	285	312.5	345
Oilskin clothing (first class):				
To San Francisco.....	294	350	344	400
To Salt Lake City.....	294	285	344	345
Chocolate and cocoa (second class):				
To San Francisco.....	267.5	298	312.5	340
To Salt Lake City.....	267.5	242	312.5	293
Confectionery (second class):				
To San Francisco.....	267.5	298	312.5	340
To Salt Lake City.....	267.5	242	312.5	293
Pillows, feather (1½ times first class):				
To San Francisco.....	455	525	531.5	600
To Salt Lake City.....	455	427.5	531.5	517.5
Electric-light fixtures (first class):				
To San Francisco.....	294	350	344	400
To Salt Lake City.....	294	285	344	345
Torches, blow (1½ times first class):				
To San Francisco.....	401.5	525	469	600
To Salt Lake City.....	401.5	427.5	469	517.5
Glass jars, n. o. s. (second class):				
To San Francisco.....	267.5	298	312.5	340
To Salt Lake City.....	267.5	242	312.5	293
Bottles, insulated and jacketed (D-1 class):				
To San Francisco.....	401.5	700	469	800
To Salt Lake City.....	401.5	570	469	600
Cut glassware (D-1 class):				
To San Francisco.....	401.5	700	469	800
To Salt Lake City.....	401.5	570	469	600
Semi-indirect lighting bowls (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	285	312.5	345
Wire fly killers (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	285	312.5	345
Carriage and wagon hardware (third class):				
To San Francisco.....	243.5	245	284	280
To Salt Lake City.....	243.5	200	284	242
Door bolts (second class):				
To San Francisco.....	219	298	256.5	340
To Salt Lake City.....	219	242	256.5	293
Lawn mowers (second class):				
To San Francisco.....	243.5	298	284	340
To Salt Lake City.....	243.5	242	284	293
Paper bags, plain (third class):				
To San Francisco.....	219	245	256.5	280
To Salt Lake City.....	219	200	256.5	242
Paper cups and pails (second class)				
To San Francisco.....	267.5	293	312.5	340
To Salt Lake City.....	267.5	242	312.5	293
Envelopes (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	285	312.5	345

APPENDIX No. 5.

Some commodity rates proposed by the coast committee compared with rates in effect at that time as shown by complainants.

[Rates are shown in cents per 100 pounds.]

Commodities and territories of origin.	Rate status.	To Pacific coast points.	To Spokane, Reno, and Phoenix.	To Boise.	To Missoula.	To Butte.	To Salt Lake City.	To Denver.
Canned goods:		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
A.—Atlantic seaboard territory	(Existing..	137.5	137.5	137.5	137.5	137.5	137.5	.....
	(Proposed..	144	135	125	128	124	124	.....
B.—Buffalo - Pittsburgh territory.	(Existing..	125	125	125	125	125	125	.....
	(Proposed..	131.5	122	123	116	113	113	.....
C.—Cincinnati - Detroit territory.	(Existing..	119	119	119	119	119	119	.....
	(Proposed..	125	116	116	110	105	105	.....
D.—Chicago territory	(Existing..	112.5	112.5	112.5	112.5	112.5	112.5	84
	(Proposed..	119	108	108	102	96	96	.....
E.—Mississippi River territory.	(Existing..	112.5	112.5	106.5	112.5	112.5	106.5	79
	(Proposed..	119	108	105	105	100	94	.....
F.—Missouri River territory...	(Existing..	106.5	106.5	94	94	94	94	59
	(Proposed..	112.5	100	97	93	87	82	.....
J.—Colorado common - point territory.	(Existing..	94	94	81.5	81.5	81.5	72.5	.....
	(Proposed..	100	93	80	82	75	68	.....
Drugs:								
A.—Atlantic seaboard territory	(Existing..	231.5	231.5	231.5	187.5	187.5	231.5	.....
	(Proposed..	244	220	220	217	210	210	.....
B.—Buffalo - Pittsburgh territory.	(Existing..	219	219	219	172.5	172.5	219	.....
	(Proposed..	231.5	215	215	204	199	199	.....
C.—Cincinnati - Detroit territory.	(Existing..	212.5	212.5	212.5	172.5	172.5	212.5	.....
	(Proposed..	225	209	209	198	189	189	.....
D.—Chicago territory	(Existing..	206.5	206.5	160	160	160	160	142.5
	(Proposed..	219	199	199	188	177	177	.....
E.—Mississippi River territory.	(Existing..	200	200	137.5	160	160	137.5	135
	(Proposed..	212.5	195	187	187	180	168	.....
F.—Missouri River territory...	(Existing..	187.5	187.5	137.5	150	150	137.5	100
	(Proposed..	200	178	172	166	154	146	.....
J.—Colorado common - point territory.	(Existing..	187.5	187.5	137.5	160	150	137.5	.....
	(Proposed..	200	178	160	164	150	136	.....
Iron and steel articles:								
A.—Atlantic seaboard territory	(Existing..	137.5	137.5	137.5	135	135	137.5	.....
	(Proposed..	144	135	135	128	124	124	.....
B.—Buffalo - Pittsburgh territory.	(Existing..	125	125	125	125	125	125	.....
	(Proposed..	131.5	122	122	116	113	113	.....
C.—Cincinnati - Detroit territory.	(Existing..	119	119	119	125	125	119	.....
	(Proposed..	125	116	116	110	105	105	.....
D.—Chicago territory	(Existing..	112.5	112.5	112.5	112.5	112.5	102.5	84
	(Proposed..	119	108	108	102	96	96	.....
E.—Mississippi River territory.	(Existing..	106.5	112.5	112.5	112.5	112.5	96.5	79
	(Proposed..	112.5	102	99	99	95	89	.....
F.—Missouri River territory...	(Existing..	94	94	94	94	94	82.5	59
	(Proposed..	100	89	86	83	77	73	.....
J.—Colorado common - point territory.	(Existing..	94	94	74	94	94	51.5	.....
	(Proposed..	100	89	80	82	75	68	.....
Pianos:								
A.—Atlantic seaboard territory	(Existing..	294	312.5	312.5	312.5	312.5	312.5	.....
	(Proposed..	306.5	288	288	273	264	264	.....
B.—Buffalo - Pittsburgh territory.	(Existing..	281.5	294	294	237.5	237.5	264	.....
	(Proposed..	294	273	273	259	253	263	.....
C.—Cincinnati - Detroit territory.	(Existing..	275	281.5	281.5	237.5	237.5	261.5	.....
	(Proposed..	287.5	267	267	233	242	242	.....
D.—Chicago territory	(Existing..	269	269	267.5	267.5	267.5	267.5	181.5
	(Proposed..	281.5	256	256	242	226	226	.....
E.—Mississippi River territory.	(Existing..	262.5	269	245	267.5	267.5	245	159
	(Proposed..	275	250	242	242	231	217	.....
F.—Missouri River territory...	(Existing..	250	250	245	250	250	245	115
	(Proposed..	262.5	234	226	218	202	192	.....
J.—Colorado common - point territory.	(Existing..	250	225	225	225	225	225	.....
	(Proposed..	262.5	234	210	215	197	179	.....
Timware:								
A.—Atlantic seaboard territory	(Existing..	194	194	194	187.5	187.5	194	.....
	(Proposed..	206.5	194	194	184	178	178	.....
B.—Buffalo - Pittsburgh territory.	(Existing..	181.5	181.5	181.5	172.5	172.5	194	.....
	(Proposed..	194	180	180	177	167	167	.....
C.—Cincinnati - Detroit territory.	(Existing..	175	175	175	172.5	172.5	175	.....
	(Proposed..	187.5	174	174	165	158	158	.....
D.—Chicago territory	(Existing..	169	169	160	160	160	160	106.5
	(Proposed..	181.5	165	165	156	147	147	.....
E.—Mississippi River territory.	(Existing..	162.5	169	162.5	160	160	152.5	100.5
	(Proposed..	175	159	154	154	147	138	.....
F.—Missouri River territory...	(Existing..	150	150	150	149	141.5	136.5	75
	(Proposed..	162.5	145	140	135	125	119	.....
J.—Colorado common - point territory.	(Existing..	150	135	135	135	112.5	112.5	.....
	(Proposed..	162.5	145	130	133	122	111	.....

APPENDIX No. 6.

Examples of graded rates proposed by the coast committee on certain commodities, apparently belonging to schedule A and schedule B; present rates also shown.

[The present rate to the coast is generally taken as reasonable, and the rates to intermediate points bear the same percentage relation to the rate to the coast as the proposed first-class rates to the intermediate points bear to the proposed first-class rate to the coast. Rates are in cents per 100 pounds.]

Commodities and destinations.	From Atlantic seaboard territory.			From Chicago territory.			From Missouri River territory.		
	Present.	Proposed.	Change. ¹	Present.	Proposed.	Change. ¹	Present.	Proposed.	Change. ¹
Agricultural implements, viz, blowers, cutters, ensilage, etc., to—	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Coast.....	231.5	216	-15.5	200	194	-6	179	169	-10
Reno.....	219	203	-16	187.5	177	-10.5	168.5	160	-8.5
Winnemucca.....	207.5	197	-10.5	179	169	-10	157.5	142	-15.5
Salt Lake City.....	204	195	-9	175	167	-8	140	123	-17
Phoenix.....	219	208	-16	187.5	177	-10.5	168.5	150	-18.5
Gallup.....	202.5	194	-8.5	162.5	169	+6.5	137.5	142	+4.5
Lordsburg.....	202.5	194	-8.5	162.5	169	+6.5	137.5	142	+4.5
Deming.....	185	190	+5	145	163	+18	120	137	+17
Canned goods to—									
Coast.....	194	194	—	169	169	—	150	150	—
Reno.....	181.5	182	+ .5	154.5	154	- .5	137.5	133	-4.5
Winnemucca.....	181.5	177	-4.5	154.5	147	-7.5	137.5	126	-11.5
Salt Lake City.....	172.5	167	-5.5	144	137	-7	115	109	-6
Phoenix.....	181.5	182	+ .5	154.5	154	- .5	137.5	133	-4.5
Gallup.....	181.5	175	-6.5	141.5	147	+5.5	114.5	126	+11.5
Lordsburg.....	170	175	+5	141.5	147	+5.5	114.5	126	+11.5
Deming.....	147.5	171	+23.5	125	142	+17	100	121	+21
Plumbers' goods, viz, bath tubs, sinks, etc., to—									
Coast.....	212.5	212	— .5	187.5	187	— .5	169	169	—
Reno.....	200	199	-1	175	170	-5	154.5	150	-4.5
Winnemucca.....	200	193	-7	175	163	-12	154.5	142	-12.5
Salt Lake City.....	195	182	-13	154.5	151	-3.5	125	123	-2
Phoenix.....	200	199	-1	175	170	-5	154.5	150	-4.5
Gallup.....	200	191	-9	175	163	-12	154.5	142	-12.5
Lordsburg.....	200	191	-9	175	163	-12	154.5	142	-12.5
Deming.....	200	187	-13	175	157	-18	154.5	137	-17.5

¹ Increases indicated by plus sign; reductions by minus sign.

APPENDIX No. 7.

Examples of graded rates proposed by the coast committee on certain commodities, principally in schedule C; present rates also shown.

[The present rate to the coast is increased somewhat and then taken as reasonable, and the rates to the intermediate points are made to bear the same percentage relation to the rate to the coast as the proposed first-class rates to the intermediate points bear to the proposed first-class rate to the coast. Rates are in cents per 100 pounds.]

Commodities and destinations.	From Atlantic seaboard territory.			From Chicago territory.			From Missouri River territory.		
	Present.	Proposed.	Change. ¹	Present.	Proposed.	Change. ¹	Present.	Proposed.	Change. ¹
Agricultural implements, viz, cultivators, harrows, etc., to—	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Coast.....	200	212	+12	175	187	+12	154.5	169	+14.5
Reno.....	200	199	-1	175	170	-5	154.5	150	-4.5
Winnemucca.....	200	193	-7	175	163	-12	154.5	142	-12.5
Salt Lake City.....	195	182	-13	154.5	151	-3.5	125	123	-2
Phoenix.....	200	199	-1	175	170	-5	154.5	150	-4.5
Gallup.....	200	191	-9	175	163	-12	154.5	142	-12.5
Lordsburg.....	200	191	-9	175	163	-12	154.5	142	-12.5
Deming.....	200	187	-13	175	157	-18	154.5	137	-17.5

¹ Increases indicated by plus sign; reductions by minus sign.

Examples of graded rates proposed by the coast committee on certain commodities, principally in schedule C; present rates also shown—Continued.

Commodities and destinations.	From Atlantic seaboard territory.			From Chicago territory.			From Missouri River territory.		
	Present.	Proposed.	Changes. ¹	Present.	Proposed.	Changes. ¹	Present.	Proposed.	Changes. ¹
Bags and bagging, etc., to—	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Coast.....	150	156	+ 6	125	131	+ 6	119	112	- 7
Reno.....	150	147	- 3	125	119	- 6	119	100	-19
Winnemucca.....	150	143	- 8	125	114	-11	119	94	-25
Salt Lake City.....	142.5	134	- 8.5	112.5	106	- 6.5	90	82	- 8
Phoenix.....	150	147	- 3	125	119	- 6	119	100	-19
Gallup.....	150	140	-10	125	114	-11	119	94	-25
Lordsburg.....	150	140	-10	125	114	-11	119	94	-25
Deming.....	150	137	-13	125	110	-15	119	91	-28
Structural steel to—									
Coast.....	206.5	219	+12.5	181.5	194	+12.5	162.5	175	+12.5
Reno.....	206.5	206	- .5	181.5	177	- 4.5	162.5	156	- 6.5
Winnemucca.....	206.5	199	- 7.5	181.5	169	-12.5	162.5	147	-15.5
Salt Lake City.....	204	188	-16	174	157	-17	140	128	-12
Phoenix.....	206.5	206	- .5	181.5	177	- 4.5	162.5	156	- 6.5
Gallup.....	206.5	197	- 9.5	181.5	169	-12.5	162.5	147	-15.5
Lordsburg.....	206.5	197	- 9.5	181.5	169	-12.5	162.5	147	-15.5
Deming.....	206.5	193	-13.5	181.5	163	-18.5	162.5	142	-20.5
Petroleum oils to—									
Coast.....	129.5	139	+ 9.5	108.5	119	+ 9.5	94.5	104	+ 9.5
Reno.....	129.5	131	+ 1.5	108.5	108	- .5	94.5	93	- 1.5
Winnemucca.....	129.5	126	- 3.5	108.5	104	- 4.5	94.5	87	- 7.5
Salt Lake City.....	129.5	120	- 9.5	108.5	96	-12.5	94.5	76	-18.5
Phoenix.....	129.5	131	+ 1.5	108.5	108	- .5	94.5	93	- 1.5
Gallup.....	129.5	125	- 4.5	108.5	104	- 4.5	94.5	87	- 7.5
Lordsburg.....	129.5	125	- 4.5	108.5	104	- 4.5	94.5	87	- 7.5
Deming.....	129.5	122	- 7.5	108.5	100	- 8.5	94.5	84	-10.5

¹ Increases indicated by plus sign; reductions by minus sign.

APPENDIX No. 8.

Statement of first-class rates proposed by the carriers compared with present rates.

[Rates are stated in amounts per 100 pounds.]

From—	Rate status.	To Pacific coast.	To Reno and Phoenix. ¹	To Spokane.	To Salt Lake City.
Group A.—Atlantic seaboard territory.....	Present.....	\$4.625	\$4.375	\$4.375	\$4.25
	Proposed.....	4.90	4.65	4.65	4.25
Group B.—Buffalo-Pittsburgh territory.....	Present.....	4.80	4.00	4.00	4.06
	Proposed.....	4.65	4.36	4.36	4.06
Group C.—Cincinnati-Detroit territory.....	Present.....	4.375	3.815	3.815	3.765
	Proposed.....	4.50	4.13	4.13	3.765
Group D.—Chicago territory.....	Present.....	4.25	3.625	3.625	3.315
	Proposed.....	4.25	3.78	3.78	3.315
Group E.—Mississippi River territory.....	Present.....	4.125	3.50	3.50	3.09
	Proposed.....	4.05	3.57	3.55	3.09
Group F.—Missouri River territory.....	Present.....	3.75	3.125	3.125	2.50
	Proposed.....	3.65	3.08	3.08	2.50
Group J.—Colorado.....	Present.....	3.25	2.625	2.60	1.925
	Proposed.....	3.15	2.625	2.50	1.925

¹ Phoenix to have the same rates as Reno from Missouri River and east.

APPENDIX No. 9.

Commodity rates proposed by the carriers compared with rates in effect at that time as shown by the record.

[Rates are stated in cents per 100 pounds.]

Commodities.	To Salt Lake City.		To Reno and Phoenix.		To Spokane.		To California coast.		To north coast.	
	Exist- ing.	Pro- posed.	Exist- ing.	Pro- posed.	Exist- ing.	Pro- posed.	Exist- ing.	Pro- posed.	Exist- ing.	Pro- posed.
Agricultural implements:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
A.—Atlantic seaboard ter...	199.5	(¹)	219	214	204	214	213.5	229	216.5	229
B.—Buffalo-Pittsburgh ter...	181	(¹)	202.5	198	202	198	215	214	214.5	214
C.—Cincinnati-Detroit ter...	171	(¹)	195	190	195	190	207.5	208	207.5	208
D.—Chicago ter...	156.5	(¹)	187.5	175	181.5	175	200	195	194	195
E.—Mississippi River ter...	147	(¹)	182.5	168	176.5	168	195	180	180	180
F.—Missouri River ter. ²	131.5	(¹)	166.5	153	156.5	153	179	175	169	175
Agricultural implement parts:										
A.—Atlantic seaboard ter...	169	197	169	197	169	197	169	197	169	197
B.—Buffalo-Pittsburgh ter...	156.5	179	156.5	182	156.5	182	156.5	185	156.5	185
C.—Cincinnati-Detroit ter...	150	169	150	174	150	174	150	178	150	178
D.—Chicago ter...	144	152	144	157	144	157	144	162	144	162
E.—Mississippi River...	137.5	145	137.5	150	144	157	137.5	155	144	162
F.—Missouri River ter. ³	121.5	121.5	125	129	126	129	125	136	125	136
Bags and bagging (gunny, jute also cotton-lined):										
A.—Atlantic seaboard ter...	150	172	150	183	150	183	150	194	150	194
B.—Buffalo-Pittsburgh ter...	137.5	158	137.5	169	137.5	169	137.5	179	137.5	179
C.—Cincinnati-Detroit ter...	131.5	146.5	131.5	158	131.5	158	131.5	170	131.5	170
D.—Chicago ter...	119	119	125	135	125	135	125	150	125	150
E.—Mississippi River ter...	112.5	112.5	125	128	125	135	125	144	125	160
F.—Missouri River ter. ³	95	95	119	113	119	113	119	130	119	130
Canned goods:⁴										
A.—Atlantic seaboard ter...	137.5	158	137.5	159	137.5	159	137.5	160	137.5	160
B.—Buffalo-Pittsburgh ter...	125	140	125	144	125	144	125	148	125	148
C.—Cincinnati-Detroit ter...	119	131	119	136	119	136	119	141	119	141
D.—Chicago ter...	112.5	113	112.5	119	112.5	119	112.5	125	112.5	125
E.—Mississippi River ter...	112.5	107	112.5	113	112.5	119	112.5	119	112.5	125
F.—Missouri River ter. ³	106.5	90	106.5	99	106.5	99	106.5	106.5	106.5	106.5
Glass bottles and fruit jars:⁴										
A.—Atlantic seaboard ter...	125	125	125	125	125	125	125	125	125	125
B.—Buffalo-Pittsburgh ter...	125	125	125	125	125	125	125	125	125	125
C.—Cincinnati-Detroit ter...	125	125	125	125	125	125	125	125	125	125
D.—Chicago ter...	105	105	119	112	119	112	119	119	119	119
E.—Mississippi River ter...	99	99	119	109	119	112	119	119	119	119
F.—Missouri River ter. ³	84	84	112.5	104	112.5	104	112.5	112.5	112.5	112.5
Iron and brass beds:										
A.—Atlantic seaboard ter...	200	204	200	212	200	212	200	219	200	219
B.—Buffalo-Pittsburgh ter...	195.5	195.5	187.5	195	187.5	195	187.5	204	187.5	204
C.—Cincinnati-Detroit ter...	174	174	181.5	186	181.5	185	181.5	195	181.5	195
D.—Chicago ter...	144	144	175	160	175	160	175	175	175	175
E.—Mississippi River ter...	137.5	137.5	169	153	175	160	169	169	175	175
F.—Missouri River ter. ³	122.5	122.5	156.5	136.5	156.5	136.5	156.5	156.5	156.5	156.5
Iron and steel articles:										
A.—Atlantic seaboard ter...	137.5	147.5	137.5	147.5	137.5	147.5	137.5	147.5	137.5	147.5
B.—Buffalo-Pittsburgh ter...	125	128.5	125	133	125	133	125	135	125	135
C.—Cincinnati-Detroit ter...	119	120.5	119	124	119	124	119	128	119	128
D.—Chicago ter...	102.5	102.5	112.5	107.5	112.5	107.5	112.5	112.5	112.5	112.5
E.—Mississippi River ter...	95.5	95.5	105.5	101.5	112.5	107.5	105.5	105.5	112.5	112.5
F.—Missouri River ter. ³	82.5	82.5	94	88	94	88	94	94	94	94

¹ No change in rates proposed.

² Missouri River territory here includes most of Nebraska, Kansas, Oklahoma, and Texas.

³ From Group J to Reno and Spokane; existing rate, 94 cents; proposed rate, 85 cents.

⁴ From Group H; rate to Spokane, 112 cents, to north coast, 119 cents.

APPENDIX No. 10.

Examiner's scale of class rates.

[Rates are stated in cents per 100 pounds.]

First-class rates to—	From Denver.	From Missouri River.	From Missis- sippi River.	From Chicago.	From Cincin- nati and Detroit.	From Buffalo and Pitts- burgh.	From Atlantic seaboard.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Pacific coast.....	410	450	475	490	515	530	550
Spokane, Reno, and Phoenix...	375	400	435	450	480	500	520
Boise.....	310	385	425	450	480	500	520
Missoula.....	325	365	425	425	460	480	500
Butte.....	285	325	400	400	440	460	480
Salt Lake City and Albuquerque	260	315	375	400	440	460	480
Denver and Cheyenne.....		185	260	285	335	370	400

¹ Rate to Spokane, 375 cents; to Reno and Phoenix, 335 cents.

Rates for the lower classes to be related to first-class rates, western classifica-
tion to apply, according to the following percentages:

Classes.....	1	2	3	4	5	A	B	C	D	E
Percentages.....	100	85	70	60	45	50	35	30	25	20

No rates are suggested to points east of Denver, for the reason that no hear-
ing has been had on the adjustment to that territory. However, the adoption
of the above scale would no doubt lead to reductions from official classification
territory to points in western classification territory east of Denver, and it
might be found proper to provide, for the present at least, that 90 or some
other per cent of the Mississippi River combination would be used for that
traffic, the separate classifications to be applied to each basing factor.

61 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET NO. 1279.¹
GRAIN FROM ST. LOUIS, MO., TO CINCINNATI, OHIO,
AND LOUISVILLE, KY.

Submitted March 7, 1921. Decided April 5, 1921.

1. Proposed cancellation of reshipping rates on grain originating in Illinois or beyond the so-called 100-mile zone west of the Mississippi River, from St. Louis, Mo., to Louisville, Ky., Cincinnati, Ohio, and points taking the same rates, approved in 59 I. C. C., 435, found justified. Order of suspension vacated and proceeding discontinued.
2. Reshipping rates on grain from St. Louis, Mo., to certain points in Indiana and Kentucky found not unreasonable or otherwise unlawful. Complaint dismissed.

Charles J. Rixey, jr., H. L. Walker, W. N. McGehee, W. A. Eggers, and William Burger for respondents and defendants.

Charles Rippin for protestant and complainant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These proceedings are closely related and will be disposed of in one report.

In *Grain from St. Louis to Cincinnati and Louisville*, 59 I. C. C., 435, we found that respondents had justified the cancellation of their proportional reshipping rates from St. Louis, Mo., to Louisville, Ky., Cincinnati, Ohio, and points taking the same rates on grain originating in Illinois and in territory west of the Mississippi River beyond the so-called 100-mile zone, but that in so far as the suspended schedules would increase the rates on grain originating within the 100-mile zone west of the river at points from which the rates to East St. Louis, Ill., exceeded those to St. Louis, they had not been justified. The respondents principally interested were the Southern, the Louisville & Nashville, and the Baltimore & Ohio.

Thereafter respondents filed new schedules to become effective January 13, 1921, which conformed with our findings in that case, and which, upon protest of the Merchants Exchange of St. Louis, were suspended until May 13, 1921.

By its complaint in No. 11835, filed September 17, 1920, the Merchants Exchange of St. Louis alleges that defendants' reshipping rates on grain from St. Louis to Princeton, Oakland City, Washington, Bedford, and North Vernon, Ind., and to Georgetown, Lexing-

¹ This report also includes No. 11835, Merchants Exchange of St. Louis, Mo., v. Baltimore & Ohio Railroad Company et al.

ton, and Paris, Ky., are unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the act.

Respondents rely mainly upon the record in *Grain from St. Louis to Cincinnati and Louisville, supra*, to justify the schedules under suspension, and the additional evidence for protestant is largely a repetition and amplification of that previously submitted in its behalf.

Our report in the case cited shows that carriers entering St. Louis from the west generally maintain equal rates on grain to East St. Louis and St. Louis, except from points lying within the so-called 100-mile zone. The actual extent of this zone varies from 75 to 135 miles. From points therein the rates to East St. Louis are from 1 cent to 2 cents per 100 pounds higher than to St. Louis. The rates from a corresponding zone in Illinois are higher to St. Louis than to East St. Louis. The latter zone, however, appears to be much smaller than that west of the river. On one line it extends 97 miles from St. Louis and on another only 36 miles. From points in Illinois beyond this zone the rates to St. Louis and East St. Louis are the same. In connection with the rates to East St. Louis on grain originating west of the river beyond the 100-mile zone all of the western lines permit transit at St. Louis and absorb the bridge toll of 2 cents per 100 pounds, but the transit arrangements of the different lines are not uniform. The Frisco and the Rock Island permit transit on grain for East St. Louis proper but not on that for reshipment beyond. The Burlington and the Missouri Pacific allow transit only at elevators served by their respective lines and those of the terminal railroad and its subsidiaries. Accordingly, one elevator on the Missouri Pacific is barred from using Burlington transit and two elevators on the Burlington can not use Missouri Pacific transit. Similarly, the transit rules of the Wabash prevent these three elevators from using Wabash transit on part of the grain moved over that line. Following the establishment of the same reshipping rates from St. Louis and East St. Louis, effective February 29, 1920, it appears that grain dealers at St. Louis ceased using these transit arrangements, and thereby shifted from the western lines to respondents the burden of absorbing the bridge toll.

Protestant urges that St. Louis dealers should not be subjected to disadvantage because of a "quarrel between carriers as to which shall bear the bridge toll"; and that restoration of the former adjustment under which St. Louis dealers were required to pay the bridge toll on nontransit grain reshipped to Cincinnati and Louisville would create a lack of uniformity in reshipping rates and result in unjust discrimination or undue prejudice against that portion of the traffic

and as between different shippers. Such lack of uniformity and the resulting unjust discrimination or undue prejudice, if any, would be due, however, to differences in the transit arrangements of the western lines over which respondents have no control and which they should not be required to equalize by their outbound reshipping rates. On Illinois grain transited at St. Louis and reshipped to Cincinnati and Louisville, there would be no such inequality in transportation charges under the proposed schedules inasmuch as the inbound carriers do not absorb bridge tolls on the outbound movement.

For about 15 years prior to February 29, 1920, respondents maintained reshipping rates on grain from St. Louis to Cincinnati and Louisville equal to the East St. Louis rates plus bridge tolls. The reshipping rate from East St. Louis was originally established to equalize rates on grain from the northwest through that gateway with those through Chicago. Protestant observes that East St. Louis and St. Louis constitute a single grain market and terminal district and urges that shipments from the elevators in St. Louis, the combined capacity of which is more than four times that of the East St. Louis elevators, should not be subjected to any disadvantage in rates. We can not disregard the fact, however, that with respect to the traffic in question the service and cost of transportation from St. Louis is substantially greater than from East St. Louis. Respondents maintain proportional rates on many other commodities from East St. Louis lower than those from St. Louis. We have heretofore held that rates between St. Louis and points in Illinois and Indiana properly may be higher than those between East St. Louis and the same points because of the additional service required, unless the absorption of the terminal charge is warranted by the measure of the rate or other circumstances. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 57 I. C. C., 639.

Upon consideration of the whole record, we find that cancellation of the reshipping rates from St. Louis as proposed would not result in the application of rates that are unreasonable or otherwise unlawful and that respondents have justified the regulations and practices stated in the schedules under suspension.

Complainant in No. 11835 offered no evidence tending to show that the reshipping rates from St. Louis to the destinations named in its complaint are intrinsically unreasonable. The Indiana points are intermediate to Louisville on traffic from St. Louis. The reshipping rates to those points are made on the East St. Louis combination and exceed the rates to Louisville. This fourth section departure would be eliminated by the schedules under suspension. It is alleged but not shown that the rates from St. Louis to the Kentucky points named exceed the combination on Louisville. A reshipping rate of

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31.5 cents per 100 pounds applies from East St. Louis to those points over the Baltimore & Ohio on wheat originating in trans-Mississippi territory. This rate exceeds by 4.5 cents the combination of reshipping rates to and from Louisville applicable over other lines. It was stated for the Baltimore & Ohio that this through rate would be canceled in order that the Louisville combination may apply. We find that the rates attacked are not unreasonable, unjustly discriminatory, or unduly prejudicial.

An order will be entered in Investigation and Suspension Docket No. 1279 vacating our order of suspension and discontinuing that proceeding; and in No. 11835 dismissing the complaint.

EASTMAN, *Commissioner*, dissenting:

On most traffic to or from points beyond the so-called 100-mile zone, St. Louis and East St. Louis have the same rates, a basis which we have approved. See the discussion of this subject in *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, *supra*. In that case we said:

The propriety of a difference in treatment of differentials between contiguous points on long and short haul traffic has been recognized by the Commission. The reason for this is that on the long-haul traffic the volume of the rate is permitted by the distance to increase to a point where the additional cost of the service represented by the differential can be spread thinly over the line haul and finally absorbed without unduly encroaching upon the line-haul revenues, whereas on the short-haul traffic the distance is not such as to permit of a sufficient increase in the volume of the rate to warrant that absorption. A reflection of this principle in the general class and commodity rate adjustment to these very points, St. Louis and East St. Louis, was approved in *Business Men's League of St. Louis v. A., T. & S. F. Ry. Co.*, 44 I. C. C., 308. Under that adjustment the differential between the two cities is absorbed on traffic originating beyond a hundred-mile zone and assessed against the shipper on traffic originating within that zone.

In the case of the rates on grain inbound to St. Louis and East St. Louis, this principle is recognized and the rates are the same from points beyond the 100-mile zone. I fail to see why the same principle should not be applied in the case of the rates on grain outbound and, indeed, the record shows that it is so applied in most instances, as for example to points in trunk line territory. The destination points in issue, Louisville and Cincinnati, lie far beyond the 100-mile zone. In my judgment, no adequate reason has been shown why the rates to these points should be an exception to the general rule.

I am authorized by COMMISSIONER DANIELS to say that he joins with me in this expression of dissent.

COMMISSIONER ESCH did not participate in the disposition of this case.

No. 11340.

BRIDGEMAN-RUSSELL COMPANY ET AL.

v.

GREAT LAKES TRANSIT CORPORATION ET AL.

Submitted February 16, 1921. Decided April 2, 1921.

Aggregate charges on butter, other dairy products, dressed poultry, and eggs moving lake and rail from Duluth, Minn., to eastern destinations, comprising the joint third-class rates and the separately established charge of 8 cents per 100 pounds for refrigeration during the lake movement, Duluth to Buffalo, N. Y., found not unjust or unreasonable. Complaint dismissed.

Baldwin, Baldwin, Holmes & Mayall, F. S. Keiser, and D. S. Holmes for complainants, Board of Railroad Commissioners of North Dakota, and other interveners supporting the complaint.

Fred N. Putnam for Railroad and Warehouse Commission of the State of Minnesota; and *William M. O'Keefe* for National Poultry, Butter & Egg Association and Boston Fruit & Produce Exchange, interveners.

Mayer, Meyer, Austrian & Platt and *F. W. Sullivan* for Great Lakes Transit Corporation.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

DANIELS, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by defendant, Great Lakes Transit Corporation, and oral argument has been had.

Complainants are Bridgeman-Russell Company and Northern Cold Storage & Warehouse Company, corporations engaged in shipping butter, eggs, and dressed poultry from North Dakota, South Dakota, Minnesota, Wisconsin, and Michigan to eastern markets through the port of Duluth, Minn. The Commercial Club of the City of Duluth, a corporation engaged in promoting the commercial interests and general welfare of Duluth, is also a complainant in this proceeding.

It is alleged that the charge of 8 cents per 100 pounds for the refrigeration of butter, other dairy products, dressed poultry, and

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eggs on steamships of the Great Lakes Transit Corporation from Duluth to Buffalo, N. Y., is unreasonable in violation of section 1 of the interstate commerce act; that the present joint third-class rates in effect from Duluth to eastern destinations via the Great Lakes Transit Corporation to Buffalo and rail lines beyond are sufficient to compensate the defendants fully for all services performed in connection with the transportation and the refrigeration of the commodities named; that the refrigeration charge complained of is collected during the entire season of navigation, although during certain periods no refrigeration service is required or desired by complainants; and that the collection of a charge for refrigeration when such service is unnecessary is unjust and unreasonable in violation of section 1 of the interstate commerce act. An award of reparation on shipments moving during the pendency of this proceeding is asked. The complaint is drawn against the Great Lakes Transit Corporation and 94 railroad and steamship lines and receivers. Persons, firms, and corporations to the number of 45 intervened in support of the complaint. Rates and refrigeration charges are stated herein in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Prior to the navigation season of 1914 the lake lines then operating had persistently refused to accept butter, eggs, and dressed poultry for transportation. Effective April 6, 12, and 14, 1913, they issued supplements to their tariffs placing these commodities, among others, on their so-called "prohibited list," that is, a list of commodities not accepted for shipment. In *Lake-and-Rail Butter and Egg Rates*, 29 I. C. C., 45, decided January 5, 1914, we found that the refusal of the lake lines to transport these commodities was unduly prejudicial to the protestants, and found that certain of the steamships should be equipped with suitable refrigeration facilities to render practicable the carriage of those commodities. The Great Lakes Transit Corporation assumed the entire defense in this proceeding, and will be referred to as the defendant. It was formed in March, 1916, and purchased the floating equipment of certain lake lines. It now operates a fleet of 22 boats on the great lakes. In compliance with the findings in the case last cited the lake lines provided three steamers, the *Rochester*, *Tionesta*, and *Northern Wave*, with refrigerators. In 1916 these three boats were acquired by defendant which in 1917 sold the *Northern Wave* to the United States government. Defendant's steamer *Troy* was then similarly equipped to take the place of the *Northern Wave*. These boats were operated by defendant during the seasons of 1916 to 1919, inclusive, between the ports of Duluth and Buffalo, and during that time carried butter, eggs, and dressed poultry. Complainants are interested primarily in the

rates on butter and eggs. The capacity of the three boats operated during the season of 1919 for butter and eggs is as follows:

Steamer.	Refrigerating compartment capacity.	Loading capacity.		Car equivalent.	
		Butter.	Eggs.	Butter.	Eggs.
	<i>Cu. feet.</i>	<i>Tons.</i>	<i>Tons.</i>	<i>Carloads.</i>	<i>Carloads.</i>
Rochester.....	9,030	155	99	14	10
Troy.....	6,970	119	75	12	8
Tionesta.....	6,370	108.5	70	10	7

During the spring of 1920 defendant's steamer *Buffalo* was fitted out with refrigerating apparatus and compartments.

Throughout the period from 1916 to 1919 butter, eggs, and dressed poultry were transported by defendant on the basis of the joint class rates applicable on the commodities without an additional charge for refrigeration. On June 30, 1919, defendant filed fifteenth section application seeking the establishment of a refrigeration charge of 15 cents on butter, eggs, and dressed poultry, in addition to the then existing applicable joint class rates. Upon protest, the matter was transferred to the formal docket and set for hearing on December 12, 1919. At the hearing, the applicant formally offered to withdraw the application, which was later denied. Subsequently defendant filed a supplement to its tariff carrying joint class rates from Duluth to eastern points, providing a charge, effective March 10, 1920, of 8 cents for refrigeration on butter, other dairy products, dressed poultry, and eggs from Duluth to Buffalo. This resulted in the filing of the complaint in this case.

In *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.*, 43 I. C. C., 892; 51 I. C. C., 84; and 59 I. C. C., 413, we found that the all-rail class rates in official classification territory applicable on carloads of dressed poultry, butter, eggs, and cheese, and a separate charge for refrigeration averaging about \$16 per car during the period from March 20, 1915, to June 1, 1917, were not unreasonable. Prior to our decision in *Kansas Car-Lot Egg Shippers' Asso. v. B. & O. R. R. Co.*, 53 I. C. C., 59, on April 7, 1919, the ratings in effect on carload as well as on less-than-carload shipments of dressed poultry, butter and eggs, and cheese in official classification territory were first class, second class, and third class, respectively. In that case we prescribed rates not to exceed third class, minimum 20,000 pounds, for transportation in official classification territory of butter, butterine, oleomargarine, dressed poultry, and eggs, in carloads. Third-class rates were established on these commodities on August 1, 1919, and resulted in reductions in the rates on butter and

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eggs from Duluth of 24 cents to New York, N. Y., and Philadelphia, Pa., 25 cents to Boston, Mass., and 17.5 cents to Rochester, N. Y. Still greater reductions were then made in the rates on dressed poultry. The joint third-class rates lake and rail from Duluth to certain destinations east of Buffalo are—

New York, N. Y.	75 cents.
Boston, Mass.	81.5 cents.
Philadelphia, Pa.	72.5 cents.
Baltimore, Md.	71.5 cents.
Albany, N. Y.	72 cents.
Utica, N. Y.	67.5 cents.
Syracuse, N. Y.	60 cents.
Rochester, N. Y.	55.5 cents.

In support of complainants' contention that the third-class rates are sufficient to include both the cost of refrigeration and the transportation of the commodities under consideration, our attention is directed to the fact that no separate charge was made for the refrigerator service during the navigation seasons of 1916 to 1919, inclusive. Since the decision in *Kansas Car-Lot Egg Shippers' Assn. v. B. & O. R. R. Co.*, *supra*, an icing charge has been and is now added to the all-rail third-class rates applicable in official classification territory. The eastbound third-class rates from Duluth are higher than corresponding rates in the opposite direction, the difference in the case of New York being 6 cents, and it is therefore urged that there is no justification for this situation other than that similar differences exist in all-rail rates.

Complainants argue that while this result may be justified on the rail lines where the trend of the traffic is westbound, no good reason exists for its application on lake-and-rail traffic, the greater volume of which is eastbound. The record shows that while the volume of the movement lake and rail is eastbound, the volume of traffic moving lake and rail on class rates, which it is testified carry in excess of 50 per cent of the tonnage, is westbound. The movement of the commodities in issue is wholly eastbound from Duluth to Buffalo and defendant's refrigerating facilities are not employed on the westbound movement, which gives rise to the suggestion, made in behalf of defendant, that the eastbound rates might be slightly higher than under circumstances where a return movement is afforded. But complainants contend that the charges via lake and rail should be less than via all rail because railroads must expend considerable sums for rights of way, tracks, and terminals, and must bear the expense of switching for the purpose of icing and re-icing cars, which are not required in the operations of steamships.

The all-rail class rates eastbound from Duluth are higher than corresponding lake-and-rail rates; the through combination all-rail
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third-class rate to New York is \$1.95 as compared with 75 cents lake and rail. The trunk lines operating east of Buffalo receive out of the joint lake-and-rail rates the same divisions as on traffic all rail from Chicago. For example, defendant receives as its proportion 54.7 per cent of the third-class rate from Duluth to New York, after the deduction of 8 cents for terminal allowance, which nets defendant 39.4 cents. This is the basis that was in effect when the trunk lines controlled the steamship companies operating on the lakes, commented upon in *Rates via Rail-and-Lake Routes*, 37 I. C. C., 302, 307.

Complainants show that from Duluth to eight typical eastern destinations the third-class rates via lake and rail have increased 16.8 per cent over the second-class rates, lake and rail, which were applicable on butter and eggs in 1916. The record also discloses that labor, material, supplies, and other costs have increased enormously since the second-class rates were in effect on these commodities. Complainants direct attention to the fact that as the entire refrigeration charge established March 10, 1920, accrues to defendant, its revenue on butter and eggs is increased approximately 20 per cent over the proportion it formerly received out of the Duluth-New York lake-and-rail third-class rates.

Using the cargo space of the steamer *Rochester* as representative, the revenue of defendant per boat and per boat-mile on butter are compared with lower revenues on other commodities which move eastbound in volume.

Commodity.	Capacity load.	Density per ton.	Distance Duluth to Buffalo.	Load capacity for each commodity.	
				Space available.	Proportion of loading space.
Wheat.....	Tons. 6,346	Cu. feet. 42	Miles. 985	Cu. feet. 388,800	Per cent. 100
Butter.....	153	59	985	9,020	2.3
Wool.....	1,327.5	209	985	388,800	100
Flour.....	6,346	44	985	388,800	100
Feed.....	6,264	61.5	985	388,800	100
Bran.....	6,264	61.5	985	388,800	100
Ore.....	6,346	15	985	388,800	100
Copper.....	6,346	8	985	388,800	100

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COMPARATIVE EARNINGS OF GREAT LAKES TRANSIT CORPORATION.

Commodity.	Point of origin.	Per ton carried.	Per cargo.		Per boat-mile.	
			On full load.	On each 1,000 cubic feet of available space.	On total space.	On each 1,000 cubic feet of loading space.
Wheat.....	Duluth.....	\$1.332	\$5,118.87	\$23.65	\$9.25	\$6.024
Butter.....	Duluth ¹	7.88	1,206.64	133.66	1.22	.136
Wool.....	Duluth ²	9.48	1,450.44	160.80	1.47	.163
Flour.....	Duluth.....	7.88	15,188.70	36.46	15.43	.040
Feed.....	Duluth.....	2.88	19,716.48	51.14	20.02	.052
	Minneapolis.....	2.38	16,298.46	43.27	16.54	.043
	Duluth.....	2.88	18,040.32	46.79	18.31	.047
	Minneapolis.....	2.38	14,908.28	38.67	15.13	.039
	Duluth.....	2.88	18,040.32	46.79	18.31	.047
	Minneapolis.....	2.38	14,908.28	38.67	15.13	.039
Ore.....	Duluth.....	1.00	6,846.00	17.76	6.95	.018
Copper.....	Duluth.....	4.27	36,238.48	75.86	29.66	.078

¹ Without 8-cent refrigerator charge.² With 8-cent refrigerator charge.

The foregoing exhibit was based upon loading to full capacity of the steamer, which it is said would seldom, if ever, occur. During the season of 1919 the space on boats of the defendant provided for refrigerated commodities was filled eastbound to 87.6 per cent of capacity. But complainants also testify that during the season of 1919 considerable tonnage of butter and eggs moved all rail for lack of refrigerator space on the lake boats.

Complainants further direct attention to the fact that while refrigeration on carload shipments must be paid for, when requested of the rail lines, the shipper has the option of shipping by rail under refrigeration or without it, whereas under the tariff of defendant it is contended that he must pay a refrigeration charge irrespective of his desires and regardless of weather conditions. They contend that little refrigeration is necessary on the lake boats, particularly in the early spring and late fall, and argue that at times it could be dispensed with entirely. The two principal complainants testified that almost invariably butter is delivered to the boats in a frozen condition, which requires little or no refrigeration for the three-and-one-half-day trip to Buffalo inside of an insulated box. Complainants assume that the shipments would be loaded into the insulated boxes for transportation on the boats, but object to the payment of the refrigeration charge if the weather conditions are such during certain periods as warrant the safe transportation without refrigeration.

In reply to these contentions defendant asserts that while the outside temperature may, on the average, be as favorable as claimed, nevertheless, the internal heat of the boat tends to raise it on board; that butter is not always delivered frozen, and that no distinction in the service rendered different shippers can be made without pro-

viding separate refrigeration compartments for each, which would be impracticable on a steamship; that the refrigeration must be calculated to preserve the commodities most susceptible to deterioration; that as a common carrier it is responsible to the shipper in the event the commodities are damaged by lack of refrigeration; and that it can not afford the risk incident to any refrigeration service other than the best. It appears that during certain months, especially December, refrigeration service may not be required for butter, as the outside temperature is well below 40 degrees and at some points as low as zero. But evidently some protection is necessary on eggs when the temperature is very low. Whether the temperature inside the boats is raised to the extent that the commodities would be damaged without refrigeration does not clearly appear. If some shippers should request refrigeration and others not desire that service, then apparently complainants' position would be that only those who requested the service should be required to pay for it, although all of the shipments would receive the same protection in the insulated boxes. The principal cost items in connection with the refrigeration, as hereinafter shown, are not the costs of operation but other costs such as depreciation and insurance. Much of the cost in maintaining these insulated boxes continues whether or not they are refrigerated. To accord refrigeration service to some of the shipments in the insulated boxes and not to others is hardly practicable.

Butter and eggs constitute a relatively small proportion of the eastbound tonnage. In 1919 the tons and proportions of the various commodities transported by defendant were:

Commodities.	Quantity.	Proportion of total freight carried.
	Tons.	Per cent.
Flour.....	537,540	59.83
Grain.....	232,118	31.39
Copper and zinc.....	59,693	6.64
Shingles.....	7,026	.78
Wool.....	5,822	.65
Butter and eggs.....	4,262	.47
Miscellaneous.....	2,207	.24
Total.....	898,667	100.00

As previously stated, during that season defendant operated 22 steamships, of which only three were equipped for transporting butter and eggs. No doubt a greater percentage of dairy tonnage would result from a comparison of the tonnage of butter and eggs transported by these three boats with the total tonnage of all kinds transported by the same boats. Complainants show that the loading space of the steamer *Rochester*, which may be regarded as typical

of the boats equipped with refrigerators, is 2.3 per cent of the total available cargo space; and that butter and eggs paid in revenue to defendant 13.6 cents per 1,000 cubic feet of loading space as compared with 5.2 cents on flour, 2.4 cents on wheat, 7.8 cents on copper, and 4 cents on wool.

Complainants introduced certain financial data which tend to show that the operations of defendant for the four years ended 1919 were highly profitable. But the prosperity of defendant does not indicate that the rates on the particular commodities under discussion were or are unreasonable or contributed to the alleged undue profits. As heretofore shown, the tonnage of butter and eggs represented less than 0.5 per cent of defendant's total tonnage transported during the season of 1919.

Defendant shows that the cost of installing the refrigeration equipment was as follows:

Steamship <i>Tionesta</i>	\$4,937.35
Steamship <i>Rochester</i>	6,788.72
Steamship <i>Troy</i>	18,352.56
Steamship <i>Buffalo</i>	est. 21,000.00
Total.....	51,073.63

The refrigerator on the steamer *Troy* consists of a wooden box approximately 37 feet long, 35 feet wide, and 8 feet deep, insulated with cork and divided into two compartments, constructed on and bolted to the upper or spar deck. The refrigerator is cooled by the ammonia process. The temperature necessary to be maintained in the box is 39 to 40 degrees for eggs, and 20 to 30 degrees for butter. The refrigeration system on the steamer *Rochester* is identical with that on the *Troy*, except that the outside construction of the box is steel instead of wood. On the steamer *Tionesta*, which also carries passengers, the box is located between the decks and carbonic-acid gas is used for refrigerating instead of ammonia. On each of the boats either an engineer or an oiler attends the compressor every half hour.

Defendant estimated the expenses of maintenance and operation of the refrigerators on the four steamers for 1920 as follows:

Repairs at \$200 per ship.....	\$900.00
Depreciation at 5 per cent.....	2,553.68
Insurance.....	1,638.28
Operation:	
Fuel, 3 tons per trip, at \$5 per ton for 56 trips.....	840.00
Ammonia (steamers <i>Rochester</i> , <i>Troy</i> , and <i>Buffalo</i>), 100 pounds per boat, at \$0.33 per pound.....	99.00
Carbonic-acid gas (steamer <i>Tionesta</i>) average cost.....	100.00
Oil at \$1 per trip for 56 trips.....	56.00
Total refrigerator expense.....	6,086.96
Tonnage as estimated for 1920.....	5,182
Cost per 100 pounds.....	.0587 cent.

Defendant in addition added 8 per cent of its investment as "fair return" and increased the cost figure including fair return 10 per cent for "fair profit," arriving at a total cost of 10.78 cents per 100 pounds. The figure of 8 per cent for fair return is said to represent the present actual cost of money. It is stated in this connection that the basic investment figures are considerably lower than the present cost of reproduction less depreciation. These cost figures are made the subject of considerable criticism by complainants. They claim that depreciation at 5 per cent on the investment is excessive to the extent that it exceeds 3 per cent. Defendant, however, explains that its regular depreciation rate on boats is 2.5 per cent per annum, and that as the service life of the boats now equipped with refrigerators is about one-half exhausted the rate of 5 per cent on the refrigeration apparatus is conservative. Complainants further criticize the estimate for insurance on the grounds, first, that insurance is paid for by the transportation rate, and second, because no greater amount of insurance is carried on steamers provided with refrigerator apparatus than on sister ships not similarly equipped. The record discloses that the insurance valuations on the *Buffalo* and also the *Troy* were increased \$25,000 as being approximately the value of the refrigeration equipment but defendant does not include so great an amount as insurance value chargeable against the traffic in question but only \$18,352.56 on the *Troy* and \$21,000 on the *Buffalo*. A considerably lower insurance value is shown on the other two boats. Defendant in its cost figures does not charge to the commodities under discussion the cost of labor for supervising or any part of the engine costs necessary to operate the refrigerating plant. In this connection defendant urges that it asks only a fair return on the investment which, as previously stated, it fixes at the actual cost rather than the cost of reproduction.

The average rail haul from Duluth to Buffalo requires seven days as compared with three and one-half days by water. It is obvious that the charge for the shorter period of refrigeration should be less than for the longer provided the circumstances are fairly comparable. The refrigeration charge between Duluth and Buffalo via all rail is stated to be equivalent to about 11 cents per 100 pounds, whereas defendant charges only 8 cents, but claims that the service actually costs it more than that amount. Complainants concede that the lake-and-rail service is far superior, and it is clearly more valuable to complainants than the all-rail service. The refrigeration facilities afforded by defendants approach the highest standard accorded by

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any transportation company, although the total charge for the service under consideration is substantially less than via all rail.

We find that the aggregate of the charges on butter, other dairy products, dressed poultry, and eggs at the joint third-class rates, lake and rail, from Duluth to New York and other eastern points, and the separately established refrigeration charge of the Great Lakes Transit Corporation do not result in charges that are unjust or unreasonable. An order dismissing the complaint will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1254.
IRON AND STEEL ARTICLES FROM GALVESTON AND
HOUSTON, TEX., TO LOUISIANA.

Submitted January 24, 1921. Decided April 5, 1921.

Proposed cancellation of tariff provision applicable in connection with rates prescribed in *Galveston Commercial Asso. v. Director General*, 57 I. C. C., 890, found not justified. Suspended schedules ordered canceled.

C. W. Owen for respondents; *G. H. Muckley* for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company; and *C. D. Speer* for Gulf, Colorado & Santa Fe Railway Company, respondents.

C. A. Bland for Beaumont Chamber of Commerce, protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

In compliance with our order in *Galveston Commercial Asso. v. Director General*, 57 I. C. C., 890, respondents established in a supplement to agent Leland's tariff I. C. C. No. 1289, effective August 7, 1920, distance rates on iron and steel articles from Galveston and Houston, Tex., to that part of Louisiana lying west of the Mississippi River. Effective September 21, 1920, they established a tariff provision applicable in connection with these rates, reading as follows:

When two or more routes of railroad composed of lines parties to this tariff, as amended, shall be in operation between shipping point and point of destination, the lowest rate applicable via any of such routes shall be applied via the other routes accepting the freight for transportation between such points. The rates from or to intermediate points shall not be affected except that the rates from or to the intermediate points shall not exceed the distance scale of rates prescribed herein for like distances, and provided further that the rate to the intermediate point shall not exceed the lowest combination of locals.

In schedules filed to become effective December 8, 1920, and re-issued in schedules filed to become effective December 20, 1920, respondents provided for the cancellation of the provision quoted and published the distance rates referred to plus the increases granted in *Increased Rates, 1920*, 58 I. C. C., 220. In the latter schedules they published a provision reading as follows:

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To points in Louisiana to which Beaumont and Orange, Tex., are intermediate via routes from Houston, Tex., the rates available from Houston, Tex., under this item will also apply from Beaumont and Orange, Tex.

Upon protest of the Beaumont Chamber of Commerce these schedules were suspended until May 7, 1921. In the meantime respondents had published a tariff, agent Leland's I. C. C. No. 1420, filed to become effective January 24, 1921, canceling I. C. C. No. 1289, and republishing the schedules under suspension. The latter schedules were suspended until May 24, 1921.

Under special permission from us respondents, on March 3, 1921, republished, effective March 26, 1921, the schedules containing the distance rates under suspension, subject to the provision first quoted. The increases granted in *Increased Rates, 1920, supra*, were originally established on August 26, 1920, in a special supplement which had not been canceled. The only effect of the suspensions was, and is, to continue in effect the provision first quoted and to make inoperative the one last quoted.

Respondents made no effort to justify the suspended schedules other than to state that the first-quoted tariff provision resulted in an unprotected fourth section violation. The schedules containing that provision and those making it applicable to the distance rates refer to our fourth section order No. 7645, and they were properly published under that order.

We find that respondents have not justified the proposed schedules. An order will be entered requiring their cancellation and discontinuing this proceeding.

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No. 10552.¹PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY
ET AL.

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted March 20, 1920. Decided April 5, 1921.

Divisions accorded complainants on bituminous coal, in carloads, from stations on their lines to various destinations on defendants' lines found unreasonable. Measure of divisions prescribed for future and adjustment required from September 1, 1920.

Frank M. Swacker and J. W. Carmalt for complainants.

William W. Collin, jr., and Borders, Walter & Burchmore for New York Central lines.

Charles MacVeagh and Charles S. Belsterling for Bessemer & Lake Erie Railroad Company.

D. P. Williams for Pennsylvania lines, Baltimore & Ohio Railroad Company, and Central Railroad Company of New Jersey.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Pittsburgh & West Virginia Railway Company and the West Side Belt Railroad Company, hereinafter called the Terminal and the Belt, respectively. The former is the successor to the Wabash-Pittsburgh Terminal Railway, hereinafter referred to as the Wabash-Pittsburgh, and now owns the stock of the Belt. At the time of the hearing the Terminal controlled this stock through an intermediary, the Pittsburgh Terminal Railway & Coal Company. Though separate legal entities, the Terminal and the Belt are operated, in practical effect, as one system. By complaint filed March 29, 1919, it is alleged that the divisions accorded complainants from April 1 to December 31, 1917, inclusive, out of joint rates on bituminous coal, in carloads, delivered to defendants, were, and that the present divisions are, unreasonable, unduly prejudicial, and not compensatory, in violation of sections 1, 3, and 15 of the act

¹ This report also embraces No. 10552 (Sub-No. 1), *Same v. Bessemer & Lake Erie Railroad Company et al.*; No. 10552 (Sub-No. 2), *Same v. Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company et al.*; and No. 10552 (Sub-No. 3), *Same v. Baltimore & Ohio Railroad Company et al.*

to regulate commerce. Complainants were under federal control and seek no relief during the period of such control. We are asked to award reparation on shipments moving between April 1 and December 31, 1917, and to prescribe for the future just and reasonable divisions of the joint rates. April 1, 1917, is the date when the property of the Wabash-Pittsburgh came into the possession of the Terminal through foreclosure proceedings and when the receiver of the Belt was discharged. Rates and divisions will be stated in amounts per net ton.

The main line of the Terminal extends eastward from Pittsburgh Junction, Ohio, to Pittsburgh, Pa., about 60 miles. It was built originally as a link between the Wheeling & Lake Erie and the Western Maryland in the Gould project of a transcontinental line, and was constructed in a manner appropriate for such service. The project failed, and the connection with the Western Maryland was never established. At West Belt Junction, Pa., it connects with the Belt, which circles south of Pittsburgh for a distance of about 20 miles from a point near the Monongahela River south of Bruceton, Pa., to West End, Pa. The Terminal also has a short line extending from a junction with the Belt eastward to Mifflin, Pa. At Pittsburgh Junction the Terminal connects with the Wheeling & Lake Erie and at Bridgeville, Pa., with the Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter called the Pan Handle; and by using the Belt it has an outlet over the Pittsburgh & Lake Erie, the Baltimore & Ohio, and the Union. Traffic from points on the Terminal and the Belt moves over the Union to reach the Bessemer & Lake Erie, hereinafter called the Bessemer. The Union and the Bessemer are both under the control of the United States Steel Corporation.

During the calendar year 1917 complainants and the Wabash-Pittsburgh handled 11,556,533 tons of revenue freight, of which about 64.14 per cent was coal. The coal delivered to defendants by complainants amounted to 18.67 per cent of complainants' total tonnage, and to 29.1 per cent of their coal tonnage. Approximately 82 per cent of the coal tonnage delivered to defendants originated at mines on the Belt, and about 97 per cent was delivered to the Pittsburgh & Lake Erie and the Bessemer. The average haul on the Terminal is estimated to have been about 31 miles and on the Belt from 7.32 to 7.77 miles.

During the period covered by the claim of reparation and at the time of the hearing, the Belt received an arbitrary division of 15 cents on coal which it originated and delivered direct to defendants, and so did the Terminal. Complainants jointly received arbitrary divisions of from 24 to 30 cents, ordinarily 25 cents, on coal originating on the Terminal, and an arbitrary division of 18 cents on coal

originating on the Belt. Complainants contend that these divisions were utterly inadequate and that the divisions should have been and should now be based on block mileages of 75 miles to originating and terminal carriers, and on actual mileage, subject to a minimum of 50 miles, to intermediate lines. This would increase their divisions an average of about 15 cents per ton, and as much as 200 per cent in certain instances.

At the hearing defendants contended that we were without jurisdiction in the case and moved that the complaint be dismissed. Prior to the argument, however, the transportation act, 1920, became law and removed all doubt as to our authority to prescribe for the future "just, reasonable, and equitable divisions" of joint rates, fares, or charges; and upon argument counsel, speaking for all the defendants, made the following statement:

I think technically there would have to be a new complaint filed, to plead a violation of the new law. That would be a matter of more or less form, and would not go substantially to the merits of the case, or I think, to the final result of it, and therefore we have not excepted to the law point and do not argue it.

Under the circumstances we feel free to consider the complaint, so far as divisions for the future are concerned, as if it had pleaded violation of the existing law.

The situation is otherwise with respect to the claim for reparation on shipments moving between April 1 and December 31, 1917. In *Morgantown & Kingwood Divisions*, 49 I. C. C., 540, 547, the following provision of section 1 of the act to regulate commerce was considered:

* * * It shall be the duty of every carrier subject to the provisions of this act * * * to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through rates and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

We found that this provision, which was in force between April 1 and December 31, 1917, gave "the small line the right to receive 'reasonable compensation' out of any joint rate applicable over a through route which it may operate conjointly with a trunk-line connection"; that it enforced "justice as between carriers as to the reasonableness of divisions" no less than it required "justice between carriers and the shippers in respect of the reasonableness of rates"; and that it also afforded carriers "a remedy against oppression in such a case as clearly as it gives a shipper a remedy against an excessive rate." In *Western Pacific R. R. Co. v. S. P. Co.*, 55 I. C. C., 71, 61 I. C. C.

the following paragraph of section 3 of the act to regulate commerce, which was likewise in effect between April 1 and December 31, 1917, was considered:

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

We held that this provision prohibited discrimination in divisions accorded out of joint rates to connecting lines, and reparation was awarded for damages suffered by reason of such discrimination.

The provisions of the act to regulate commerce, under which we concluded that we had jurisdiction to prescribe divisions of joint rates which had not been established pursuant to a finding or order by us, remained in effect until the passage of the transportation act, 1920. The question is whether our jurisdiction to prescribe such divisions has been changed in any manner.

By the transportation act, 1920, section 1 of the interstate commerce act was amended to read, in part, as follows:

It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property * * * in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

And paragraph 6 of section 15 was added, reading in part as follows:

Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith.

It will be seen that this paragraph relates to two classes of cases, (1) where the joint rates were voluntarily established by the interested carriers, and (2) where the joint rates were established pursuant to an order of the Commission.

suant to a finding or order made by us. Under this paragraph in cases of the second class we can require the adjustment of divisions from the time the complaint was filed. We are here dealing with a case where the joint rates were established pursuant to certain orders and findings of the Commission, which will be referred to later. It is apparent that if this complaint had been filed after the above amendment to the interstate commerce act took effect we could only require adjustment of the divisions from the time the complaint was filed. A reasonable construction of the statute makes it clear that paragraph 4 of section 1 and paragraph 6 of section 15, taken together, were intended by the Congress to supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to our finding or order.

Jurisdiction may be taken away by repeal of the statutes conferring it by necessary implication as well as by express words. As noted above, we decided that under the act as it stood prior to amendment by the transportation act, 1920, we could require the adjustment of divisions prior to the filing of the complaint, but it is well settled that if a statute giving a special remedy is repealed without a saving clause in favor of pending suits, all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect it can not be after. *South Carolina v. Gailard*, 101 U. S., 433. It is equally well settled that if a law conferring jurisdiction is repealed without any reservation as to pending cases all such cases fall with the law. *Railroad Co. v. Grant*, 98 U. S., 398, and cases there cited.

It is fundamental that we can only act under the jurisdiction conferred upon us by the Congress. We must exercise powers which we have now subject to any limitations which now attach to them, as our jurisdiction and powers are drawn from the statute as it is now, not as it was in 1919 when the complaint was brought. It might be said that this construction destroys a right of complainants. A statutory right is to be distinguished from the remedy for its enforcement. But whether this new legislation has taken away a remedy and thereby indirectly destroyed a right of complainants is not for us to decide.

We find that in this case we are without jurisdiction to consider the divisions in effect prior to the filing of the complaint.

The period subsequent to the filing of the complaint may be divided into two parts. From January 1, 1918, to February 29, 1920, inclusive, complainants' properties were under federal control, and complainants have no interest in the divisions that were received during that period. Complainants accepted the provisions of sec-

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tion 209 of the transportation act, 1920, and have no interest in the divisions received during the six months from March 1 to August 31, 1920, inclusive. Their real interest in this case is in the divisions received from and after September 1, 1920, and in the divisions for the future.

The provisions above quoted of the interstate commerce act leave no doubt as to our power to prescribe "just, reasonable, and equitable divisions" for the future or that the intent of the present law is to limit reparation (a) to cases "where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission" and (b) to the "period subsequent to the filing of the complaint or petition or the making of the order of investigation." In this instance from mines on the Terminal the joint rates with all of the defendants except the Bessemer and its connections were originally established pursuant to our order in *Pittsburgh & Southwestern Coal Co. v. W.-P. T. Ry. Co.*, 31 I. C. C., 660. The other joint rates in question have been affected by our findings or orders in *The Fifteen Per Cent Case*, 45 I. C. C., 303; *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66; or *Lake Cargo Coal Rates*, 46 I. C. C., 159. All the existing joint rates were established pursuant to our finding in *Increased Rates, 1920*, 58 I. C. C., 220. We entertain no doubt as to our power to require the adjustment of divisions received subsequent to September 1, 1920, upon the basis which we find would have been just, reasonable, and equitable.

With this preliminary discussion of the law we come to the facts of the case. In 1879 or 1880 the Pittsburgh & Lake Erie and its connections established joint rates with, and accorded an arbitrary division of 15 cents to, the Little Saw Mill Run Railroad. After the latter was taken over by the Belt in 1902 the same division was allowed the Belt for a longer average haul. Between 1907 and 1909 the Bessemer and the Baltimore & Ohio, and their connections, likewise established joint rates with the Belt and accorded it a division of 15 cents. In 1908 or 1909 the Bessemer and its connections established joint rates with the Wabash-Pittsburgh and the Belt, allowing them jointly divisions ranging from 24 to 30 cents. From points on the Wabash-Pittsburgh combination rates then applied in connection with the other defendants. In *Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry Co.*, *supra*, decided October 5, 1914, we required the establishment of joint rates on coal from points on the Wabash-Pittsburgh which should not exceed by more than 10 cents per ton the rates from points on the Belt. In establishing these rates the Pittsburgh & Lake Erie and the Baltimore & Ohio, and their connections, accorded the Wabash-Pittsburgh and the Belt 25 cents jointly. The Pan Handle and its connections originally allowed

the Wabash-Pittsburgh alone 25 cents, but later, when a reduction in rates took place, this division was reduced to 15 cents. On traffic originating on the Belt the Pan Handle allowed the Wabash-Pittsburgh and the Belt 18 cents jointly.

Complainants acquired on April 1, 1917, the property of the Wabash-Pittsburgh and the Belt, which had been in the hands of receivers, and under rule 9(j) of Tariff Circular 18-A adopted the tariffs and divisions then in effect. Since that time rates on coal have been increased generally, following *The Fifteen Per Cent Case*, *supra*, *Bituminous Coal to C. F. A. Territory*, *supra*, *Lake Cargo Coal Rates*, *supra*, and general order No. 28 of the Director General of Railroads; but up to the time of the hearing, July 17-19, 1919, complainants' divisions remained the same. It was stated upon argument that in December, 1919, they were increased by the Director General in proportion to the increases of the joint rates under general order No. 28.

✓ The evidence shows that the divisions have never been satisfactory, either to complainants or to their predecessors, and that they have made repeated efforts, without success, to induce defendants to accord them larger amounts. What may have been the effect of the failure of complainants' predecessors to bring the matter seasonably to our attention we need not now determine. Upon their acquisition of the properties in April, 1917, complainants immediately began negotiations with defendants for better divisions. These negotiations consumed much of the period prior to the beginning of federal control on January 1, 1918, when the question of divisions ceased to be of interest to complainants. Nevertheless, further requests for agreement upon a reasonable basis of divisions were made formally in March, 1919, and upon the failure of these requests the present complaints were brought.

Complainants submitted evidence as to cost of handling coal on the Terminal. Their witness estimated the wages of train crews and all expenses for locomotive supplies and repairs in placing empty cars and assembling loaded cars at points of origin as of April 1, 1917, at 3.2 cents per ton, the expense of handling cars in the yards at points of origin at 3.2 cents, and the expense of the road movement at the same amount, making an aggregate estimated expense for train service of 9.6 cents per ton. The total operating expenses for the Terminal were stated to be twice the cost of train service, or 19.2 cents per ton, which is equivalent to \$9.12 per car of 47.5 tons. No estimate of similar expenses for the Belt was submitted beyond a statement that its costs are somewhat less because of shorter hauls. Complainants point out that these figures do not include return on investment, taxes, and other items, and that all factors of cost had

advanced 80 to 90 per cent since 1917. They allege that the financial difficulties which they and their predecessors have experienced have been due in large measure to the inadequate divisions received from defendants.

This evidence as to expense of operation per ton of coal carried, made up as it is of statements supported by little definite data enabling it to be checked, can not be regarded as an adequate or convincing analysis of costs. But even if it were free from these defects, it could not well be used as a measure of the divisions received in the absence of evidence as to the relation between the joint rates in question and the cost of the service performed by defendants, as well as by complainants. Cost of service is but one of the factors taken into consideration in the making of freight rates, and the wide variations in rates make it probable that many of them fail to cover all the factors of operating expense that a careful cost study might allocate against the service.

Defendants submitted evidence as to the divisions accorded during the period from April 1, 1917, to December 31, 1917, to various coal-originating roads, which they allege are comparable with the Belt. The following table is representative of this evidence:

	Average haul.	Rate division.
	<i>Miles.</i>	<i>Cents.</i>
By the Pittsburgh & Lake Erie to the—		
Monongahela R. R. (Pa.).....	14.53	15.
Monongahela R. R. (W. Va.).....	58.61	25.
Morgantown & Wheeling Ry.....	1.84	15. ¹
Pittsburgh, Chartiers & Youghiogheny R. R.....	9.54	16.
Pittsburgh, McKeesport & Youghiogheny R. R.....	5 to 45	25.
By the Bessemer & Lake Erie to the—		
Western Allegheny R. R.....	17	12.5 or 15.
Unity Railways.....	5	15.
Union R. R.....	11	15.
By the Baltimore & Ohio to the—		
Washington Run R. R.....	4	5 to 8.
Indian Creek Valley R. R.....	10	15.
Cumberland & Pennsylvania R. R.....	15	On 50-mile block basis. ²
West Virginia & Northern R. R.....	6	On percentage basis.
Morgantown & Kingwood R. R.....	31	On 40-mile block basis. ³

¹ First six months in 1918; no joint rates in 1917.

² Minimum divisions ranging from 21 to 25 cents on tidewater coal.

³ Minimum division of 20 cents to certain eastern destinations including tidewater.

The distances in this table are approximate. Complainants point out that the Pittsburgh, McKeesport & Youghiogheny is leased to the Pittsburgh & Lake Erie; that the latter also controls, jointly with the Pennsylvania, the Monongahela and the Pittsburgh, Chartiers & Youghiogheny; that contributions in addition to the divisions have been made to help out the Monongahela; that the Union is controlled by the same interests as the Bessemer; that divisions with such roads under common control are largely a bookkeeping proposition I. C. C.

tion; and that several of the other roads named are controlled by coal interests and were built primarily to provide an outlet for the coal. They are not, complainants allege, comparable in point of construction or operation with the Terminal and the Belt.

An exception among the roads of this class is the Montour Railroad, owned by the Pittsburgh Coal Company. It forms a semicircle south of Pittsburgh about 48 miles long and connects with the Pittsburgh & Lake Erie at Montour Junction, Pa., and with the Bessemer through the Union at Mifflin Junction. During the reparation period the Bessemer allowed the Montour, on coal destined to Bessemer points, divisions based on mileage block percentages; on coal destined to Conneaut Harbor for lake-cargo purposes, divisions of 30 and 28 cents; and on coal destined to points on connections beyond the Bessemer, divisions of 15 cents. The lake-cargo divisions were based on a contract under which the Bessemer agreed to receive for its divisions such amounts as would produce ton-mile earnings equivalent to those contemporaneously received by the Baltimore & Ohio for its haul of coal from the Fairmont district, in West Virginia, to Lorain, Ohio. The divisions accorded by the Pittsburgh & Lake Erie to the Montour were on a somewhat similar basis. On short-haul traffic to destinations comparable with those reached by the Bessemer, the divisions were on a percentage basis, and complainants' exhibits show that on April 1, 1917, they ranged from 24 to 38.3 cents, and that the division on lake-cargo coal was 24 cents. On all other coal traffic the Montour received from the Pittsburgh & Lake Erie an arbitrary of 15 cents. When the rates later advanced, the percentage divisions were automatically increased in amount and the record indicates that on lake-cargo coal via the Pittsburgh & Lake Erie the division may have been as high as 43 cents at the time of the hearing.

By way of contrast, during the period for which reparation is sought the Bessemer allowed the Terminal and Belt jointly divisions on lake-cargo coal of 25, 30, and 28 cents, and divisions on other coal ranging from 24 to 30 cents. To the Belt alone both the Bessemer and the Pittsburgh & Lake Erie allowed 15 cents uniformly, and the latter allowed the Terminal and the Belt jointly a uniform 25 cents.

The explanation of its divisions with the Montour is thus stated by the Bessemer on brief:

For many years the Bessemer had a preponderance of iron ore traffic south-bound. There was no coal on that part of the Bessemer which penetrates the Pittsburgh district. Early in 1900, the mines on the Union were practically exhausted, so that there was no return loading for the cars of the Bessemer which brought ore to the furnaces on the Union. All other trunk lines serving the Pittsburgh district had coal mines upon their lines, and it was natural that

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they would not give to the Bessemer any portion of the tonnage going to competitive destinations. From an operating standpoint it was to the advantage of the Bessemer to secure loading for the cars northbound which otherwise would return empty. This led to negotiations with the Montour, and its owners the Pittsburgh Coal, to perfect some plan under which the coal tributary to the Montour could be made available for handling by the Bessemer facilities.

After a year of negotiation, a contract was entered into with the Montour, predicated upon which that railroad spent \$5,000,000.00; and the Pittsburgh Coal also spent between \$8,000,000.00 and \$10,000,000.00 in development of new mines. The Bessemer realized a substantial traffic northbound, which they could have obtained in no other way. To illustrate, during the year 1918, the Bessemer handled seven and one-half million tons of iron ore to the furnaces on the Union and carried northbound seven and one-half million tons of coal, thus effecting a balanced tonnage.

Similar divisions were not accorded complainants, it was testified, because a constant and dependable flow of traffic could not be assured. The Pittsburgh & Lake Erie followed the Bessemer in divisions with the Montour, for fear that it would cease to be an important factor in traffic originating on the Montour if it did not.

The Pittsburgh & Lake Erie also submitted the following list of arbitrary divisions received during the reparation period by destination or delivering lines:

	Divisions.
Bath & Hammondsport R. R.-----	8 to 10 miles, 25 cents.
Central Indiana R. R.-----	5 to 13 miles, 25 cents.
Chicago, Indianapolis & Louisville R. R.-----	9 miles, 25 cents.
Baltimore & Ohio R. R.-----	7 to 39 miles, 30 cents.
Cincinnati Northern R. R.-----	2 to 94 miles, 30 cents.
Erie Railroad.-----	2 to 8 miles, 15 cents.
Chicago & Eastern Illinois R. R.-----	73 miles, 29 cents.
Lehigh Valley R. R.-----	8 to 35 miles, 25 cents.
New York Central R. R.-----	3 to 8 miles, 15 cents.
New York, Chicago & St. Louis R. R.-----	4 to 37 miles, 25 cents.
Youngstown & Ohio River R. R.-----	2 to 8 miles, 10 cents.

Numerous exhibits were introduced by complainants purporting to show that defendants allow each other as originating lines relatively larger divisions than they accord to complainants, but for the most part these exhibits do not show the distances which are necessary for purposes of comparison. In general it appears to be the custom of the trunk lines in the Pittsburgh district not to open their roads on arbitrary or switching rates to other trunk lines, or, in other words, not to accept coal from trunk line connections through an interchange so located that the service of the originating line is equivalent to that of a branch line or feeder.

During the reparation period the Pittsburgh & Lake Erie states that it bore the burden of the car supply for complainants' mines, to the detriment of its own traffic; that in 1917 it could supply only

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69 per cent of the cars needed by the mines on its own lines, but that it, nevertheless, delivered to complainants 2,907 loaded and 18,470 empty cars, receiving back 15,702 loaded and 264 empty cars. In reply complainants submitted evidence that both the Terminal and the Belt own a relatively large number of coal cars per mile of line and contribute to the traffic their full share of equipment. They state that the apparently unfavorable showing in 1917 noted by the Pittsburgh & Lake Erie was due to the abnormal conditions surrounding the interchange of cars in the months immediately prior to federal control.

Defendants, the Pittsburgh & Lake Erie and its subsidiaries, claim further that there are "equitable" considerations in their favor which have a bearing on the divisions in question. Briefly stated, the argument is that they originate coal tonnage on their own lines which is competitive with that offered by complainants; that participation in joint traffic from complainants' lines decreases the tonnage originating locally; that they get less money from this joint traffic than from the local tonnage; that they do not want the joint traffic; and that this situation creates an important strategic advantage or "equity" in opposition to complainants' demands. This argument is somewhat inconsistent with the readiness of the Pittsburgh & Lake Erie to grant larger divisions in order that it might continue to share in the traffic of the Montour. However, it leads to a consideration of the principles by which we may be guided in passing upon the reasonableness of divisions.

Paragraph 6 of section 15 of the interstate commerce act now provides that in prescribing and determining the divisions of joint rates, fares, and charges we shall

give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

As we view this provision, it recognizes clearly that divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers. Upon analysis, the "equitable considerations" stressed by defendants mean only that complainants are in great need of the joint rates in question while defendants are not in such need and, indeed, might in some cases prefer to refrain from participating. It follows that defendants have a strategic advantage,

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if divisions were to be fixed by the ordinary process of bargaining. But one of the duties of a common carrier is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, and equity does not necessarily demand that they be compensated by larger divisions in the instances where it might be more advantageous to confine traffic to their own lines.

In our opinion it was to avoid the unduly prejudicial effect of such strategic advantages upon the weaker carriers and the resulting impairment of transportation facilities upon which a substantial portion of the country depends that our powers over divisions were clarified and strengthened. We are not prevented by the provision above quoted from taking into consideration any circumstances and conditions which we may deem to have weight in measuring the justice and reasonableness of divisions; but it is an intent clearly disclosed that we shall keep continually in view the public interest, the public need for a transportation system strong in all its parts, and the consequent necessity that carriers shall receive compensation fairly proportioned to the amount and character of the service which they perform and adequate to enable them to perform it efficiently.

The record now before us is far from satisfactory. The divisions accorded complainants are termed "arbitraries," and the word is fairly descriptive of the manner in which they have been fixed. No evidence has been presented indicating the method or principle by which complainants' divisions were determined. Apparently the Belt was accorded 15 cents because it was customary in the case of short feeders on which coal originated. The Terminal and the Belt jointly were accorded, as a rule, 10 cents more, because the joint rates from mines on the Terminal were 10 cents higher than the Pittsburgh district rates. When the Pan Handle agreed to the district rates from Terminal points it reduced the latter's division to 15 cents.

One thing clearly appears: During the last few years various increases in the joint rates have been effected. All of these increases were made necessary by the general rise in operating costs which has affected complainants equally with defendants. Assuming that the divisions in force on April 1, 1917, were reasonable, they should clearly have been increased proportionately as the rates were increased so that complainants as well as defendants might have relief from the growing burden of their operating expense.

As has already been indicated, complainants' evidence as to cost of service is not adequate, and, even if it were, could hardly be used as a measure of divisions in the absence of evidence in regard to the relation of the joint rates to the total cost of the service performed. The evidence as to the relative amount and character of service performed is also inadequate, but defendants concede that complainants,

as the lines burdened with the cost of originating and assembling the shipments, are entitled to relatively larger divisions in proportion to length of haul than are the intermediate lines and, to a lesser extent, the delivering lines. They claim, however, that the divisions received on April 1, 1917, were reasonable, judged by this test, and in evidence of this claim submitted exhibits showing that on the date mentioned the ton-mile earnings of the Belt from its arbitrary of 15 cents for a weighted average haul of 7.32 miles were uniformly 20.5 mills, while the ton-mile earnings of the Pittsburgh & Lake Erie out of its divisions ranged from 11.45 mills on short-haul traffic to 2.68 mills on traffic destined to distant points. But where no allowance is made for terminal costs and the hauls vary greatly in length, comparisons of ton-mile earnings are apt to be misleading. The comparison, moreover, is much less favorable in the case of the Terminal and Belt jointly, where an arbitrary of 25 cents for the weighted average haul of 31.32 miles yielded but 8.06 mills. Thus on the haul to Monaco, Pa., the Terminal and Belt jointly received 25 cents for an average haul of about 31 miles, while the Pittsburgh & Lake Erie received 25 cents for a haul of 23 miles. To New Castle, Pa., the latter received 55 cents for a haul of 48 miles. After July 1, 1917, when the rates were increased, the division of the Terminal and Belt remained unchanged, but the Pittsburgh & Lake Erie received 40 cents to Monaco and 70 cents to New Castle.

Complainants' plan of basing divisions on block mileages of 75 miles to originating and terminal carriers and on actual mileage, subject to a minimum of 50 miles, to intermediate lines is similar in general structure to methods of determining divisions which are frequently employed and is supposed to recognize the relatively greater service performed by originating and delivering roads. But the basis for the mileage figures used was not disclosed. Moreover, the plan contemplates treating the Terminal and Belt as two distinct and separate roads, thus greatly increasing the divisions which they jointly would receive. In our judgment, for the purpose of fixing divisions the separate corporate organizations of these commonly controlled and operated carriers should be disregarded and they should be treated as one system. The same is true of the Bessemer and the Union.

Upon the record which is before us we are of opinion that complainants have not shown that their present divisions of the joint rates for the longer hauls are unreasonable or unjustly discriminatory, except to the extent that these divisions do not reflect the increases which have been made in the joint rates subsequent to April 1, 1917, and to the further extent that they were less than 25 cents on that date in the case of joint rates participated in by complain-

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ants jointly. We think, however, that complainants have shown that their divisions of the joint rates for the shorter hauls should fairly be determined by a different plan.

With respect to the divisions since September 1, 1920, and for the future, we therefore find that in the case of joint rates on the traffic in question between points where the corresponding joint rates on April 1, 1917, exceeded \$1.10 per net ton, the just, reasonable, and equitable divisions to which complainants would have been, now are, and for the future will be severally or jointly entitled are divisions bearing to the joint rates contemporaneously in effect the same relation that the corresponding divisions on April 1, 1917, bore to the joint rates then in effect, with the exception that in the case of joint rates participated in by defendant Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company and by both complainants, the just, reasonable, and equitable divisions to which complainants would have been, now are, and for the future will be jointly entitled are divisions bearing to the joint rates contemporaneously in effect the same relation that a division of 25 cents would have borne to the corresponding joint rates in effect on April 1, 1917. We find in the case of joint rates on the traffic in question between points where the corresponding joint rates on April 1, 1917, did not exceed \$1.10 per net ton, that the just, reasonable, and equitable divisions to which complainants would have been, now are, and for the future will be jointly or severally entitled are divisions based on the percentages obtained by using mileages of 50 miles for complainants severally or jointly, and actual mileages for each participating defendant, subject to minima of 25 miles for intermediate and 50 miles for terminal carriers; and that for this purpose defendants Bessemer & Lake Erie Railroad Company and Union Railroad Company shall be treated as one carrier. The nearest two-figure percentage should be used in all cases, avoiding decimals and thus simplifying computation, and the division resulting from the application of the percentage to the joint rate should be figured only to the nearest half cent. We further find that the divisions received by complainants should be adjusted upon the basis above found just, reasonable, and equitable, effective as of September 1, 1920, leaving defendants collectively to divide as may seem to them proper what is left of the joint rate after complainants have received their division.

An appropriate order will be entered.

EASTMAN, Commissioner, concurring:

I am in entire accord with the report of the majority, except as to reparation. The complaint was filed March 29, 1919. Under the law as it then stood and until March 1, 1920, we could, following the 61 I. C. C.

Morgantown & Kingwood and the *Western Pacific* decisions, have awarded reparation for damages suffered by reason of unreasonable divisions during the period from April 1 to December 31, 1917. If the case had been decided within the 11 months succeeding the filing of the complaint, therefore, we could have awarded reparation; but inasmuch as the decision was delayed until after the passage of the transportation act, 1920, the majority are of opinion that we can not now do this. I hesitate to accept this conclusion.

The provisions of law which were relied upon in the *Morgantown & Kingwood* and *Western Pacific* cases are still in force without material change. Under sections 8 and 16 of the interstate commerce act we are still empowered to award damages to any party complainant injured by any act prohibited or declared to be unlawful or by the omission of any duty imposed by the act. Moreover, to remove all doubt, section 1 now makes it specifically the duty of every carrier to establish "just, reasonable, and equitable divisions." The conclusion of the majority that we are without authority to award the reparation in question, therefore, rests solely upon the new paragraph 6 of section 15. Is this paragraph so inconsistent with the power to award reparation which is granted by the terms of the other provisions above mentioned that we must assume that the Congress intended to repeal this jurisdiction by implication? Properly construed, I do not believe that such inconsistency exists.

Paragraph 6 provides that in certain cases we may "determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith." Is this "adjustment" equivalent to an award of reparation for damages suffered by reason of violation of the act? I do not think that it is. It seems to me something independent of damage, an additional power which permits us to require "adjustment" to be made on the basis found reasonable even if no damage has been suffered. It is conceivable, I think, that a carrier might show that its divisions had been unreasonable and inequitable and yet be unable to prove damage. This might happen, for example, if the joint rate were too high, so that the inequitable division would still provide adequate compensation for the service rendered. But there is no doubt as to damage in this case.

I am unable to believe that this superimposed power to require a retroactive "adjustment" (which apparently is to be exercised in our discretion) is inconsistent with power to award damages for injury resulting from violations of the act, or that it repeals or extinguishes the latter power, which was and is expressly conferred by other pro-

visions of the act. The courts are slow to find repeal by implication, and in this case it seems to me that there is no warrant for such a finding. The law, as it existed from April 1 to December 31, 1917, was violated and complainant suffered damage from such violation. Notwithstanding the "adjustment" provisions of paragraph 6 of section 15, I believe that we have power to award reparation.

And even if it should be held that paragraph 6 of section 15 prevents us from awarding reparation covering any period prior to the date of filing the complaint, so far as complaints with respect to divisions are concerned which are filed *after* the passage of the transportation act, does it prevent us from awarding reparation where the complaint was filed, as in this case, *before* the passage of that act? In other words, did the Congress intend to give retroactive application to this paragraph and thus establish a season of immunity with respect to certain violations of the act to regulate commerce of which complaint had been made, but which had not been passed upon by us prior to the enactment of the act? "A statute will not be applied by the courts to actions or proceedings pending at the time of the passage when such application would work injustice, as by cutting off rights to which parties were entitled under the prior law." 36 Cyc., 1215. I feel that there is at least sufficient doubt about this matter, so that we would be justified in construing the law in favor of the equities of the situation.

I am authorized to say that COMMISSIONERS McCHORD and POTTER join in this expression.

HALL, *Commissioner*, dissenting:

I am in accord with this report except in so far as it prescribes a block system with constructive mileage as a basis for determining just and reasonable divisions to complainants out of the joint rates earned by all participating carriers, without evidence or consideration of the services rendered by other participants or fixation of their respective divisions of the joint rate.

Whether or not in determining the share coming to any complaining participant we must also determine the share of each other participant upon division of the joint rate, as seems to be contemplated by the statutory provisions quoted in the majority report, it is obvious that nothing of the sort has been done here. The report determines the just, reasonable, and equitable divisions to which complainants have been and will be entitled, and leaves defendants collectively to divide as may seem to them proper what is left of the joint rate after complainants have received their division. The record, inadequate as it confessedly is, has afforded some basis for

estimating complainants' costs and needs, but not the costs or needs of other participants.

Some defendants are not even named in the report. Their respective hauls under the joint rate vary widely. The constructive mileage applied to short hauls of these participants may in the aggregate so swell the total constructive mileage as even to reduce complainants' divisions below what they should be, for aught that here appears. But whether complainants will fare well or ill under these fictions applied to such vital matters as the revenues of carriers, it seems to me that just and reasonable and fair divisions, like rates, can not be determined by application of any arbitrary formula, and that this block-system formula finds no adequate basis either in the record or in the report.

COMMISSIONER ESCH did not participate in the disposition of this case.

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No. 11825.
TRAFFIC BUREAU CHAMBER OF COMMERCE,
LA CROSSE, WIS.,
v.
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted November 18, 1920. Decided April 2, 1921.

Class rates from eastern points to La Crosse, Wis., found to be unreasonable and unduly prejudicial. Reasonable and nonprejudicial rates prescribed.

W. W. West for complainant.

K. F. Burgess, J. N. Davis, D. P. Connell, and Robert H. Widdicombe for defendants.

Herman Mueller for St. Paul Association of Public & Business Affairs, intervener.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS,
DANIELS, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions were filed by defendants.

The chamber of commerce of La Crosse, Wis., complains in this proceeding of the class and commodity rates applying from points in trunk line, New England, and central territories to La Crosse, alleging that they are unreasonable, unjustly discriminatory, and subject its members to undue prejudice and disadvantage by comparison with the corresponding rates from the same points to Dubuque, Iowa, St. Paul, Minn., Chicago, Ill., and Milwaukee, Wis. Reasonable and just rates are asked for the future. In this report rates are stated in cents per 100 pounds, except as otherwise noted.

La Crosse is approximately 282 miles west of Chicago via the Chicago, Milwaukee & St. Paul, and 110 miles north of Dubuque and 128 miles south of St. Paul via the Chicago, Milwaukee & St. Paul. Dubuque is 186 miles west of Chicago via the Chicago, Burlington & Quincy and is one of the so-called upper Mississippi River crossings. For a number of years joint through class rates were maintained from points in trunk line territory to La Crosse on the basis of the combination of the local rates to Chicago and

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proportional rates west thereof. Until June 25, 1918, these proportional rates, which applied also on traffic from the east to St. Paul, were on a scale of 40 cents, first class; effective on that date they were increased to 50 cents, first class, in accordance with general order No. 28 of the Director General of Railroads. The rates to Dubuque are the result of the decisions in *The Mississippi River Case*, 28 I. C. C., 47, and 29 I. C. C., 530; *The Five Per Cent Case*, 31 I. C. C., 351; *The Fifteen Per Cent Case*, 45 I. C. C., 303; general order No. 28; and *Increased Rates, 1920*, 58 I. C. C., 220. Following the supplemental report in *The Mississippi River Case, supra*, the rates from New York to all Mississippi River crossings from St. Louis to Dubuque were placed on the St. Louis basis, or 117 per cent of the New York-Chicago rates, whereas theretofore the rates to Dubuque were 122 per cent of the New York-Chicago rates plus certain arbitraries.

The class rates from New York to La Crosse and Dubuque together with the short-line distances are as follows:

	Dis- tances.	Classes.					
		1	2	3	4	5	6
From New York to—	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
La Crosse.....	1,175	216.5	188.5	148.5	100	86.5	72
Dubuque.....	1,079	184	162.5	123	86	73.5	61.5
Differences.....		32.5	26	20.5	14	13	10.5

The short-line distance from New York to La Crosse is 1,107 miles, a difference of but 28 miles, but the difference in distance over the route through Chicago, via which about 90 per cent of the traffic is said to move, is 96 miles. The difference in the first-class rate, La Crosse over Dubuque, is 32.5 cents, the previous La Crosse rate having been increased 33½ per cent and the previous Dubuque rate 40 per cent under *Increased Rates, 1920, supra*. On the other hand, the distance to La Crosse is 128 miles less than to St. Paul via the short routes, but the rates to both points are the same. The disadvantage to La Crosse is shown in the fact that, on the basis of the carload rates into Dubuque plus the less-than-carload rates out, Dubuque on certain traffic is able to reach many points north, west, and south of La Crosse at a lower aggregate through charge than obtains on the same traffic between the same points if moved to and from La Crosse.

Class rates from points in central territory are lower to La Crosse than to St. Paul but are materially higher than to Dubuque. The rates from Pittsburgh, Pa., may be taken as illustrative of the relative adjustment from central territory.

	Dis- tances.	Classes.				
		1	2	3	4	5
Pittsburgh to—	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
La Crosse.....	781	176.5	146	112.5	82	62
St. Paul.....	866	186.5	158.5	119.5	86.5	66.5
Dubuque.....	635	136	115.5	91	68	47.5

In April, 1915, the La Crosse Shippers Association attacked the class and commodity rates from eastern points to La Crosse and particularly their relation to the rates to Dubuque, St. Paul, and other points. That complaint was consolidated with others involving rates to points in Wisconsin and was considered in *The Wisconsin Rate Cases*, 44 I. C. C., 602, decided April 25, 1917. At that time the rates from New York to Chicago, St. Paul, La Crosse, and Dubuque were the following:

	Classes.					
	1	2	3	4	5	6
From New York to—	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Chicago.....	78.8	68.3	62.5	36.8	31.5	26.3
St. Paul.....	118.8	102.3	78.5	54.8	47.5	39.3
La Crosse.....	118.8	102.3	78.5	54.8	47.5	39.3
Dubuque.....	92.2	79.9	61.4	43.1	36.9	30.8
La Crosse over Dubuque.....	26.6	22.4	17.1	11.7	10.6	8.5

The class rates from Pittsburgh to La Crosse and Dubuque were:

	Classes.				
	1	2	3	4	5
Pittsburgh to—	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
La Crosse.....	81.3	76	67.5	40.1	34.4
Dubuque.....	62.3	54	41.4	28.8	25.1
Differences.....	20	22	16.1	11.3	9.3

We there found that there was no sufficient justification for the large differences between the class rates to La Crosse and Dubuque and ordered the establishment of rates from New York to La Crosse on the basis of 145 per cent of the New York-Chicago rates with rates from other points in trunk line territory and in New England on the same relation to the rates prescribed from New York that they had borne to the rates theretofore maintained from New York. Class rates between central territory and La Crosse were required to be established with proper relation to the rates from trunk line territory and in such manner as to give complainants reasonable rates free from undue prejudice or disadvantage.

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On the basis of 145 per cent of the Chicago rates the rates to La Crosse would have become

Classes -----	1	2	3	4	5	6
Cents -----	114.3	99	76.1	53.4	45.7	38.1

or on a scale of 35.5 cents, first class, instead of 40 cents over the rates to Chicago. This would have resulted in a first-class rate to La Crosse 22.1 cents instead of 26.6 cents higher than the corresponding rate to Dubuque and 4.5 cents lower than to St. Paul. It will be noted that though it was urged that the St. Paul rates were depressed, the adjustment prescribed contemplated the creation of a moderate spread La Crosse under St. Paul. However, prior to the effective date of the order in *The Wisconsin Rate Cases, supra*, we authorized an increase in the New York-Chicago rates to a scale of 90 cents, first class. *The Fifteen Per Cent Case, supra*. One hundred and forty-five per cent of that scale would have resulted in higher rates to La Crosse than to St. Paul, in contravention of the fourth section of the act. The carriers therefore observed the St. Paul rates as maxima at La Crosse. The spread between the first-class rates to La Crosse and Dubuque was intended to be reduced to 24.5 cents. This spread was subsequently increased to 31 cents through the application of general order No. 28. Thus by reason of the increases in the New York-Chicago rates and rates related thereto, La Crosse derived little benefit from the finding in *The Wisconsin Rate Cases, supra*, and the differences in rates therein found to have subjected La Crosse to undue prejudice have been increased. In that case we said at page 642:

The circumstances and conditions which have been most strongly operative in requiring the maintenance of the present level of rates to the lower and upper Mississippi River crossings and to points in northern Illinois do not apply to transportation to the Wisconsin cities involved in this case, and therefore have not exerted the same influence upon the rates to and from those cities. It has not been shown that the same rates per mile should be applied to those cities as to points in prorating territory. The differences in competitive conditions and other circumstances shown of record, however, do not justify the present large differences between the class rates applicable to and from points in northern Illinois and on the Mississippi River in Iowa, on the one hand, and those applicable to and from cities in southern Wisconsin, on the other.

The evidence herein is substantially the same as that introduced in the former proceeding. Jobbers or manufacturers of sheet-metal building material, hardware, groceries, agricultural implements, furniture, clothing, and other commodities testified as to their competition with Dubuque and their inability to reach points even in the immediate vicinity of La Crosse on an equality with their competitors.

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As found in *The Wisconsin Rate Cases, supra*, while there is a substantial competition in many commodities between shippers at La Crosse and others located in prorating territory such as Dubuque, the principal competition of La Crosse is with the twin cities. The justification offered by defendants for the large disparity between the rates was fully discussed in the former report and therefore need not be repeated here. No changes of importance have occurred since the date of the former decision except that the rates have been substantially increased. It should not be overlooked, in passing, that on certain traffic westbound to South Dakota, La Crosse, though more distant than the twin cities, enjoys the same rates. It is also to be noted that on eastbound class traffic La Crosse enjoys rates less than the twin cities.

Substantially the same relative adjustment found appropriate in *The Wisconsin Rate Cases, supra*, and confirmed by the record herein, should be made effective. At the time of that decision the first-class rates from New York were as follows:

To Chicago.....	78.8 cents
To Dubuque.....	92.2 cents
To La Crosse.....	118.8 cents
To St. Paul.....	118.8 cents

Had the adjustment contemplated in *The Wisconsin Rate Cases, supra*, without other rate changes been made effective, the first-class rates would have been—

To Chicago.....	78.8 cents
To Dubuque.....	92.2 cents
To La Crosse.....	114.3 cents
To St. Paul.....	118.8 cents

This adjustment would have created and was intended to create a spread, La Crosse under St. Paul, of 4.5 cents, first class; and would have reduced the spread, La Crosse over Dubuque, from 26.6 cents to 22.1 cents, first class, a reduction in the spread of 4.5 cents. As the result of *The Fifteen Per Cent Case, supra*, the rate, first class, from New York to Chicago became 90 cents. Inasmuch as we had devised, as the mechanics, of effecting the desired adjustment, a rate, New York to La Crosse, equal to 145 per cent of the rate New York to Chicago, the rate from New York to La Crosse would have become \$1.305. But as the rate to St. Paul, a farther distant point, was but \$1.80, the carriers observed the St. Paul rate as maximum at La Crosse. While such an observance was not at variance with our order, it did result in there being no spread between La Crosse and St. Paul, although as above indicated, we had anticipated that there would be a spread in the rates to the two points. As the conjoint

result of *The Wisconsin Rate Cases, supra*, and *The Fifteen Per Cent Case, supra*, the rates, first class, from New York became—

To Chicago	90	cents.
To Dubuque	105.5	cents.
To La Crosse	130	cents.
To St. Paul	130	cents.

The spread between La Crosse and Dubuque became 24.5 cents, a net decrease of 2.1 cents instead of 4.5 cents. Upon this rate adjustment there was superposed the 25 per cent increase under general order No. 28. The rates, first class, from New York became—

To Chicago	112.5	cents.
To Dubuque	132	cents.
To La Crosse	162.5	cents.
To St. Paul	162.5	cents.

Under this adjustment the rates to St. Paul and La Crosse continued the same; while the spread, La Crosse over Dubuque, became 30.5 cents. Finally under *Increased Rates, 1920, supra*, the rates, first class, from New York became—

To Chicago	157.5	cents.
To Dubuque	184	cents.
To La Crosse	216.5	cents.
To St. Paul	216.5	cents.

These are the present rates. They are the same to St. Paul and La Crosse, while the spread, La Crosse over Dubuque, has risen to 32.5 cents.

In order to effectuate such a relative adjustment as was originally found appropriate we find that the class rates from New York to La Crosse are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceed the following, which include the increases authorized in *Increased Rates, 1920, supra*:

Classes	1	2	3	4	5	6
Cents	209.5	182.5	139.5	98	83.5	70

Class rates from other points in trunk line territory, including Buffalo, N. Y., and Pittsburgh, western termini of eastern trunk lines, and from New England should be readjusted so as to bear the same relation to the rates herein suggested for application from New York to La Crosse as they have heretofore borne to the rates from New York. The record does not afford a basis for a readjustment of rates to La Crosse from points in central territory, other than from Buffalo and Pittsburgh on the eastern border thereof, but some realignment may be necessary in order to maintain established relationships. The commodity rates attacked are not shown to be unreasonable or otherwise unlawful.

It is apparent that the establishment of the rates found reasonable to La Crosse may result in inequalities with respect to the rates from eastern points to Madison and Beloit, Wis., and other points from and to which rates were prescribed in *The Wisconsin Rate Cases, supra*, but which rates are not here in issue, unless a realignment of rates between those points is contemporaneously made in complying with the findings herein. The carriers should readjust these differences consistent with the principles announced in the present case.

An appropriate order will be entered.

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No. 11075.

AUSTIN ABBOTT ET AL.

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
RAILROAD COMPANY, ET AL.

Submitted January 13, 1921. Decided March 31, 1921.

1. Rates on bituminous coal, in carloads, from Belleville, Benton, Duquoin, Murphysboro, and other points in southern Illinois to Springfield, Mo., via routes in connection with the St. Louis-San Francisco Railroad, found to have been unreasonable. Reparation awarded.
2. Rates applicable on bituminous coal, in carloads, from Quinimont, W. Va., and Lilly, Pa., to Springfield, Mo., found not unreasonable. Refund of overcharges directed.

S. C. Bates for complainants and intervener.*James M. Chaney* and *Alex. M. Bull* for Director General and defendants under federal control.*E. D. Mohr* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

Exceptions were filed by the defendants to the report proposed by the examiner.

Complainants are various corporations, partnerships, and individuals engaged in the retail coal business at Springfield, Mo. By complaint filed December 9, 1919, they allege that the rates charged by defendants for the transportation of coal since July 20, 1917, from Belleville, Benton, Duquoin, Murphysboro, and other Illinois points, Quinimont, W. Va., and Lilly, Pa., to Springfield Mo., were unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and section 10 of the federal control act. Reparation is sought on all shipments on which the rates assailed were collected since December 10, 1917. L. W. Seaman, a coal dealer of Springfield, intervened and asks reparation on a number of shipments made by him. The Commission is asked to prescribe reasonable and nonprejudicial rates for the future, but it appears that satisfactory rates have been established. Throughout this report rates are stated in amounts per ton of 2,000 pounds, and do not include the increases authorized in *Increased Rates 1920*, 58 I. C. C., 220.

Springfield, Mo., is on the St. Louis-San Francisco Railway, hereinafter referred to as the Frisco. It is also served by a branch line of the Missouri Pacific Railroad Company, hereinafter called the Missouri Pacific, extending from Springfield to Crane, Mo., where it connects with the main line. The distance from East St. Louis, Ill., to Springfield, is 242 miles via the Frisco, and 451 miles by way of the Missouri Pacific via Pleasant Hill and Carthage, Mo.

The points of origin in Illinois are for the most part included in the so-called "inner" and "outer" groups of mines. Of the inner group points Belleville is typical, while Benton and West Frankfort may be taken as fairly representative of the outer group. The other Illinois points of origin are Duquoin and Murphysboro. The shipments moved over various roads from points of origin usually by way of East St. Louis. Beyond that point the Frisco handled most of this traffic to Springfield, although a number of shipments moved over the Missouri Pacific. Of a total of 425 shipments, 338 were delivered by the Frisco and 87 by the Missouri Pacific. Some shipments originating at Illinois mines moved over the Missouri Pacific direct to Springfield via Thebes, Ill., Poplar Bluff, Mo., and Diaz, Ark., but they are not involved.

Prior to July 1, 1917, the rates from Illinois mines to Springfield were uniform via all routes as follows: from the inner group \$2; from Duquoin \$2.05; from Murphysboro \$2.125; and from the outer group \$2.15. Some of these were published as local rates, some as joint through rates, others were composed of the proportional rates to East St. Louis and the locals beyond, while still others were combination rates made up of factors published in separate tariffs. But regardless of the manner of publication, all were based on fixed differentials over East St. Louis, 25 cents from the inner group, 30 cents from Duquoin, 37.5 cents from Murphysboro, and 40 cents from the outer group.

The relationship between these mines was first disturbed following our decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303. On July 1, 1917, the eastern roads added 15 cents to the local and joint rates to Springfield, as well as to the factors of the combinations up to East St. Louis. Effective July 20, 1917, the western roads applied a like increase to the factors beyond East St. Louis, thus resulting in a double increase on combination rates. The spread was further widened by the advances effective June 25, 1918, under general order No. 28. Here again single increases were applied to local and joint rates while the increases were added to both factors of combination rates. Beginning October 5, 1918, various attempts were made to realign these rates but a satisfactory adjustment was not effected until December 25, 1919, when all rates were again

established on a uniform basis, with rates of \$2.55 applying from the inner group, \$2.60 from Duquoin, \$2.675 from Murphysboro, and \$2.70 from the outer group. These rates applied over all routes with few exceptions and these exceptions have since been removed.

In addition to the rates from Illinois points the complaint attacks the rate charged on three shipments of soft coal which moved shortly after the effective date of general order No. 28; one carload from Quinnimont and two from Lilly. The rates legally applicable on these shipments were combination rates of \$5.45, composed of separate factors to and from East St. Louis. The factor up to East St. Louis from Quinnimont was a joint rate, while the factor from Lilly was published as a proportional rate to East St. Louis when destination was beyond. These rates were the result of double advances under general order No. 28, the increases having been applied to both factors of the combinations. They were subsequently reduced to \$5.05.

Complainants contend that the rates brought about by the application of double increases to combination rates were unreasonable when considered in relation to other rates from the same territory. They allege that on shipments from Illinois points originating on lines not participating in joint rates Springfield dealers were compelled to pay combination rates which were higher than the joint rates over other lines from the same point or other points in the same group. Thus it was shown that from Belleville, when the Illinois Central Railroad or the Southern Railway was the originating carrier, a rate of \$2.15 applied prior to June 25, 1918, and \$2.55 thereafter, while complainants were contemporaneously charged rates of \$2.30 and \$2.975 on shipments which moved over the Louisville & Nashville Railroad in connection with the Frisco. The same situation was alleged to be true with regard to other points. Some mines, however, were served by only one line which did not participate in joint rates and shippers were forced to pay the higher combination rates on all shipments from those points. Complainants also pointed out that in some cases the combination rates in effect from inner group points exceeded the joint rates from points in the outer group, although there was an established differential of 15 cents in favor of the inner group.

It is evident that the addition of increases to both factors of the combination rates from the Illinois mines destroyed the long existing relationships and resulted in rates clearly out of line with others from the same territory and groups, and in some instances from the same points of origin. In *Continental Coal Corporation v. L. & N. R. R. Co.*, 53 I. C. C., 377, the combination rates therein assailed were found unreasonable and unduly prejudicial and it was pointed out that the application of increases to both factors of those com-

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binations had defeated in part the apparent intention of general order No. 28 to preserve the then existing relationships. In *Gosline & Co. v. Director General*, 55 I. C. C., 220, attention was called to the instruction of the Railroad Administration, issued to railroads shortly after general order No. 28 had been promulgated, that in the case of coal rates constructed on combination the authorized increases should be applied only to the through combination of rates. However, the reasonableness of the increases actually applied by the railroads to combination rates can not be determined entirely by a construction of general order No. 28, but, as was stated in *Parlin & Orendorff Co. v. Director General*, 59 I. C. C., 63, "the controlling question is whether the resulting rates were unreasonable or otherwise unlawful."

The following table taken from an exhibit submitted by complainants shows rates in effect to Springfield from the inner and outer groups during the period covered by the complaint, together with ton-mile earnings based on the average distance from the points here in issue to East St. Louis and the mileage of the Frisco beyond, 264.5 miles from the inner group, and 345 miles from the outer group.

Dates.	Inner group.		Outer group.	
	Rates.	Earnings per ton-mile.	Rates.	Earnings per ton-mile.
		<i>Mills.</i>		<i>Mills.</i>
June 30, 1917.....	\$2.60	7.56	\$2.15	6.23
July 20, 1917.....	2.30	8.69	2.45	7.10
June 25, 1918.....	2.976	11.24	3.124	9.06
October 6, 1918.....	2.70	10.20	2.65	8.26
December 25, 1919.....	2.55	9.63	2.70	7.82

The rates via the Missouri Pacific were in some instances lower than the rates via the Frisco.

Defendants concede that the rates should be uniform via all routes, but insist that the through rates from the Illinois mines are too low and that a proper adjustment would have been made by increasing the through rates instead of decreasing the combinations. They urge that the operating conditions on both the Frisco and the Missouri Pacific are unfavorable; that numerous grades are encountered; that the movement from East St. Louis over the Mississippi River to St. Louis involves expensive terminal service and a bridge toll of 25 cents per ton on all shipments; and that the empty return movement of cars to the mines is heavy.

The average distances via the Missouri Pacific to Springfield are from the inner group 477.5 miles and from the outer group 530 miles. Defendants urge that in determining the reasonableness of

the rates consideration should be given to the greater distance via the Missouri Pacific. Using the average distances via both routes of 371 miles from the inner group and 437 miles from the outer group, after deducting 25 cents, the bridge toll at St. Louis, they show that the ton-mile earnings under the rates in effect prior to June 25, 1918, were 5.5 mills from the inner group and 5 mills from the outer group, and under rates subsequent to June 25, 1918, 7.34 mills from the inner group and 6.58 mills from the outer group. The Frisco, which carries the bulk of the traffic, originally made the rates to Springfield, and the Missouri Pacific, with a haul from East St. Louis of nearly twice that of the Frisco, voluntarily met those rates.

Using the average distances via both routes as a basis for comparison, defendants have shown numerous rates for approximately equal distances between Illinois mines and points in Kansas, Nebraska, Missouri, and Iowa, which are on the whole somewhat higher than the rates assessed. On the other hand, complainants have shown rates between points in Arkansas, Missouri, Kansas, and Nebraska, which are lower, distance considered, than the rates charged.

With respect to the rates from Quinnimont and Lilly the record does not contain sufficient evidence to support a finding of unreasonableness. It appears, however, that on the shipment from Quinnimont charges were collected at a rate of \$5.65 whereas the rate legally applicable was \$5.45. The overcharges of \$6.32 should be promptly refunded.

During a portion of the period during which shipments were made the prices of coal were subject to the regulation of the federal government through the Fuel Administration. At least on some of the shipments the complainants sold their coal for the mine price, plus all freight charges paid and the margin of profit allowed by the Fuel Administration. Defendants contend that on such shipments complainants were not damaged inasmuch as they would not have received any more profit had the lower rates been in effect, and an award of reparation would permit profits in excess of those allowed by the government. If complainants have paid and borne as transportation charges unreasonable rates, they are entitled to an award of reparation. They have "paid cash out of pocket that should not have been required of them." *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S., 531.

Upon consideration of the whole record we are of the opinion and find that the rates assailed via the routes in connection with the St. Louis & San Francisco Railroad Company were unreasonable to the extent that they exceeded, on shipments which moved prior to

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June 25, 1918, a rate of \$2.15 from the inner group, \$2.20 from Duquoin, \$2.275 from Murphysboro, and \$2.30 from the outer group; and on shipments which moved on or after that date a rate of \$2.55 from the inner group, \$2.60 from Duquoin, \$2.675 from Murphysboro, and \$2.70 from the outer group. Over the very much longer route in connection with the Missouri Pacific, the rates assailed were not unreasonable. We further find that the complainants and intervener made shipments over the routes as described, and paid and bore the charges thereon; and that they have been damaged and are entitled to reparation to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable, with interest. The exact amount of reparation due can not be determined on this record and complainants and intervener should comply with rule V of the Rules of Practice.

No order for the future is necessary.

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No. 11745.

W. B. A. COMMUTERS CLUB

v.

WASHINGTON, BALTIMORE & ANNAPOLIS ELECTRIC
RAILROAD COMPANY.

Submitted March 7, 1921. Decided April 2, 1921.

One-way, round-trip, and commutation fares between stations on defendant's line in Maryland and Washington, D. C., not found unreasonable or otherwise unlawful. Complaint dismissed.

Robinson White for complainant.

Edwin G. Baetjer and *George Weems Williams* for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

DANIELS, *Commissioner*:

No exceptions were filed to the report proposed by the examiner.

By complaint, filed August 23, 1920, it is alleged that defendant should file with this Commission schedules of its monthly commutation fares, and that the passenger fares between stations on defendant's line in Maryland and Washington, D. C., are in violation of sections 1 and 3 of the interstate commerce act. Just, reasonable, and nonprejudicial fares are asked for the future.

Defendant operates an electric railroad between Washington and Baltimore, Md., and between those points and Annapolis, Md. It owns 54.95 miles of line. In addition, it has trackage agreements over the rails of other carriers, including the Washington Railway & Electric Company, a street railway within the District of Columbia, hereinafter referred to as the street railway. Freight constitutes a small portion of defendant's traffic.

Fifteenth section application was made by defendant on June 6, 1918, to increase its fares to 3 cents per mile, which the steam railroads were then charging. As its revenues did not indicate a necessity for such an increase, that application was denied.

On June 11, 1920, effective July 11, 1920, defendant published increased one-way and round-trip fares between Washington and all of its stations in Maryland. Complainant herein and others protested. After an informal hearing, we refused to suspend these

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increased fares. This constituted the first increase therein since 1908, when they were originally established.

Prior to the increases in question, defendant's line was divided into zones for rate-making purposes. The fare between zones was in multiples of 5 cents. The present fares are constructed by adopting the 8-cent street-car fare of the District for the haul from Fifteenth street and New York avenue, Northwest, Washington, to District Line, Md., plus 3 cents a mile beyond. Defendant originally fixed 10 cents as its minimum beyond District Line where the basic rate per mile made less. This was later reduced to 5 cents. Complainant's interest is confined to the fares to stations as far as Naval Academy Junction, Md., 24.98 miles from Fifteenth street and New York avenue. The length of the haul within the District being 6.97 miles, this use of 8 cents produces a maximum through charge per mile to those stations of 2.5 cents one way and 2.4 cents round trip, and a minimum of 1.5 cents both one way and round trip. These fares entitle passengers to a transfer to the lines of the street railway.

Complainant is satisfied with the rates to Gregory, Huntsville, and White, Md., the first three stations beyond District Line.

Defendant's intrastate fares are on a basis of 3 cents a mile.

Complainant alleges discrimination because a different percentage of the increase was made at some stations than at others, citing the extreme increases in certain round-trip fares from 25 to 46 cents between Washington and Cherry Grove, Md., and from \$1.10 to \$1.54 between Washington and Camp Meade Junction, Md. This variation resulted from the change in rate construction. Distant stations in any given zone will suffer a greater percentage of increase than near-by stations in the same zone when a change is made from a zone to a mileage basis. Similar allegation is made because of greater proportionate increases in the round-trip fares than in the single-trip fares. Complainant cites the fares to Springfield, Md., a station 15.74 miles from Fifteenth street and New York avenue, as illustrative. Here the one-way fare was increased 9 cents and the round-trip fare 20 cents. This is due to the fact that the old fares were graduated upon a 5-cent basis, and the round-trip fares were 10 per cent less than double one way, whereas the present fares are graduated on a 1-cent basis, and the round-trip fares are 95 per cent of double one way.

On July 11, 1920, defendant increased its commutation-book fares between District Line and other stations in Maryland 20 per cent, except in a few instances where slightly different percentage increases were made to correct inequalities which existed in the old rates. On September 4, 1920, these fares were filed with us, effective September 7, 1920. Theretofore defendant filed no commutation-

book fares. At the hearing no witnesses who traveled on commutation-book fares testified. There is nothing in the record in relation to those fares except a reference by complainant's counsel to the tariff now on file with us and a comparison furnished by defendant at complainant's request of the new fares with the old intrastate fares.

Complainant stresses the fact that defendant in the construction of its one-way and round-trip fares includes 8 cents for the haul to District Line when it does not pay that amount to the street railway. Defendant's commutation-book fares apply between its stations in Maryland and District Line. Whenever a cash fare is collected from a commutation passenger within the District, the entire amount of that cash fare, which is 8 cents or four fares for 30 cents, is turned over to the street railway. Tickets sold to one-way or round-trip passengers include the fare within the District. Defendant pays to the street railway approximately 5 cents for each ticket passenger, the amount varying slightly under certain conditions in the contract between the two companies. The position of the street railway is that defendant should pay the present street-car fare in the District, i. e., 8 cents, and not 5 cents, which was the fare when the contract was entered into. This controversy is now before a board of arbitration. Defendant deposited bond in the amount of \$90,000 to cover the difference of 3 cents per passenger should the board decide against it. If the defendant, in the construction of its fares, would allow 5 cents for the haul within the District, instead of 8 cents, complainant would have no serious objection to 3 cents per mile beyond the District.

Complainant questions defendant's estimate of 5.57 cents as the cost of hauling a passenger in its cars 6.97 miles over the tracks of the street railway.

Defendant estimated the average increase in passenger fares to be about 26 per cent, but urges that this preserves the same spread between its fares and those of the steam railroads with which it competes. Comparing the passenger revenue for the months of July, August, and September of 1919 with 1920, an increase of 5.7 per cent in passenger revenue is shown. During the same three months in 1919, 1,063,820 passengers were carried, and in 1920, 932,055, a decrease of 12.4 per cent.

In 1917 the gross operating revenue in comparison with the previous year increased \$618,922.86, and the gross operating expenses \$226,979.95; in 1918 the former increased \$1,341,889.93, and the latter \$1,001,685.21; and in 1919, the gross operating revenue decreased \$733,895.18, against a decrease of \$227,203.64 in the gross operating

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expenses. The following compares defendant's operating revenue with its operating expenses per car-mile for the years shown:

	1916	1917	1918	1919
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Railway operating revenue per car-mile.....	37.33	52.34	54.30	42.86
Railway operating expenses per car-mile.....	20.18	24.78	32.56	20.91

The operating ratio increased from 54.07 in 1916 to 69.81 in 1919.

The annual report of defendant filed with us purports to show that on December 31, 1919, the investment in road and equipment of defendant's line totaled \$10,843,283.13. Without accepting that figure as the actual value of its line for rate-making purposes, it is noted that a return of 6 per cent upon the above book value would amount to \$650,596.99. Its operating income in 1919 was \$596,006.61, as compared with \$765,495.08 in 1918; \$718,051.29 in 1917; and \$396,331.71 in 1916. Defendant estimates its operating income for the fiscal year ended June 30, 1920, to be about \$596,582.22. However, complainant doubts the reliability of this estimate.

Additional capital in the amount of \$1,200,000 must be secured by defendant for terminals at Washington and Baltimore on which work has begun. It expects to have to pay 8 per cent interest thereon.

Defendant has \$5,369,000 first-mortgage 5 per cent bonds outstanding, which were sold at approximately 95. Its capital stock on December 31, 1919, amounted to \$4,759,250, of which \$3,000,000 represented common stock and \$1,759,250 preferred stock. In accordance with the plan of reorganization approved in 1911 by the court in the receivership proceeding, and by the Public Service Commission of Maryland, some of the stock was given in settlement of the debts of the company and in payment of defaulted interest on bonds; for every five shares of stock held prior to the receivership the holder was permitted to subscribe to five shares of the new common stock upon payment of \$50 for one share of preferred; and some was sold on the market. Prior to 1917 no dividend was paid on its common stock. In that year it paid 6 per cent. In 1918 it paid 6 per cent in cash and 7.5 per cent in liberty bonds. In 1919 it paid 7.5 per cent.

The rapid increase in revenue beginning in 1917 resulted mainly from traffic to the cantonment which was located on its line at Camp Meade, Md., and between Washington and Baltimore, due to the enlargement of the government's activities during the war. The revenue from these sources has rapidly decreased since the conclusion of hostilities, as the following shows:

Year.	Between Baltimore and Washington.		To Camp Meade.	
	Jan. to Sept., inclusive.	Full year.	Jan. to Sept., inclusive.	Full year.
1918.....	\$847,801.53	\$1,170,728.99	\$645,851.47	\$874,618.51
1919.....	727,404.79	931,448.74	335,506.99	380,554.36
1920.....	661,398.38	.....	100,812.02	.....

The tax rate in the territory traversed by defendant's line has greatly increased.

Defendant's employees have not received any of the benefits of the wage adjustment put into effect on the steam railroads. Its wage contract expired in January, 1921, and it anticipates that an increase in wages will have to be made.

We find that the interstate fares assailed are not unreasonable or otherwise unlawful. The complaint will be dismissed.

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INVESTIGATION AND SUSPENSION DOCKET No. 1295.
GRAIN AND FLOUR FROM MISSOURI RIVER POINTS TO
DULUTH, MINN., AND OTHER POINTS.

Submitted February 23, 1921. Decided April 9, 1921.

Proposed increased rates on grain and flour, in carloads, from Omaha, Nebr., and certain other points to Duluth, Minn., and certain other destinations found not justified. Suspended schedules ordered canceled.

M. M. Joyce for Minneapolis & St. Louis Railroad Company; *P. B. Beidelman* for Great Northern Railway Company; and *W. E. Adair* for Northern Pacific Railway Company.

F. S. Keiser for Commercial Club of Duluth and Board of Trade of Duluth; *C. T. Vandenoever* for southern Minnesota mills; *Lee Kuempel* for Minneapolis Traffic Association; and *L. D. Veltum* for Northwestern Consolidated Mill Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to become effective February 5, 1921, the Minneapolis & St. Louis Railroad and its connections propose to cancel their joint rates on grain and flour, in carloads, from Omaha, South Omaha, and Nebraska City, Nebr., and Council Bluffs, Iowa, to Duluth, Minn., Superior, Wis., and certain other points, leaving in effect higher combination rates based on Minneapolis, Minn. Upon protest of the Minneapolis Traffic Association, the Commercial Club of Duluth, and various milling interests served by the Minneapolis & St. Louis, operation of the schedules was suspended until June 5, 1921. Rates will be stated in cents per 100 pounds.

No attempt was made by respondents to justify the proposed increased rates. It was stated on behalf of the Minneapolis & St. Louis that the sole reason for the proposed increases was that respondents were no longer in accord as to divisions. If divisions can not be adjusted satisfactorily by the parties, recourse may be had to us in an appropriate proceeding.

We find that the schedules under suspension have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

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INVESTIGATION AND SUSPENSION DOCKET No. 1261.¹
RATES TO AND FROM NASHVILLE AND RELATED
POINTS.

Submitted March 12, 1921. Decided April 12, 1921.

Proposed changes in interstate class rates to and from Nashville, Tenn., and other southeastern points found not justified, except as indicated in report. Respondents required to cancel proposed schedules and to file new schedules establishing rates in accordance with maximum bases prescribed.

Nelson W. Proctor, Charles J. Rixey, jr., and W. A. Northcutt for respondents generally.

M. E. Newell and D. Lynch Younger for Tennessee Central Railroad Company.

J. O. Hendley for Railroad and Public Utilities Commission of the State of Tennessee; *Charles E. Cotterill* for Southern Traffic League; *T. M. Henderson* for Traffic Bureau of Nashville; *M. M. Caskie* for Chamber of Commerce of Montgomery, Ala.; *O. L. Bunn* for Birmingham Traffic Association and Birmingham Chamber of Commerce; *E. Del Wood* for Chattanooga Manufacturers Association; *Morgan Richards* for Chamber of Commerce, Selma, Ala.; *Thos. E. Grady* and *E. B. Gaines* for Savannah Board of Trade and Savannah Cotton Exchange; *Thomas J. Burke* for Charleston Traffic Bureau; *Carl Giessow* and *Edgar Moulton* for New Orleans Joint Traffic Bureau; *James S. Devant* for Memphis Freight Bureau; *William A. Wimbish* for Murfreesboro Board of Trade and Atlanta Freight Bureau; *R. H. Brashear* for St. Louis Chamber of Commerce; *C. E. Widell* for Tennessee Manufacturers Association; *A. J. McGehee* for Southern Interior Traffic Association; *Benjamin Gilham* for Chamber of Commerce, Macon, Ga., Southern Kaolin Manufacturers Association, Georgia Brick Manufacturers Association, and Macon Manufacturers Association; *Charles S. Hoskins* for Board of Trade of Tampa, Fla.; *R. A. P. Walker* for Interstate Cotton Seed Crushers Association and American Cotton Oil Company; *H. Ignatius* for Procter & Gamble Company and Buckeye Cotton Oil Company; *A. J. Young* for Fertilizer Traffic Committee and International Agricultural Corporation; *H. P. Freedman* for

¹ This report also embraces Investigation and Suspension Docket No. 1286, Rates to and from Nashville and Related Points (2).

Portsmouth Cotton Oil Refining Corporation and Gulf & Valley Cotton Oil Company; *W. C. Ermon* for Southern Cotton Oil Company; *F. Van Slyck* for Globe Soap Company, Colgate & Company, N. K. Fairbanks, Peet Brothers, and Louisville Food Products Company, protestants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

By schedules filed to become effective on various dates between December 15, 1920, and January 25, 1921, respondents propose certain changes in the class rates, mostly increases, applicable, generally speaking, to and throughout the southeast. The proposed schedules in No. 1261 were suspended until May 14, 1921, and those in No. 1286 until May 25, 1921.

The schedules, for the most part, are said to be filed in compliance with our order in *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, 55 I. C. C., 648, hereinafter referred to as the *Murfreesboro Case*. We there found upon complaint made on behalf of Murfreesboro, Columbia, Dickson, Gallatin, Lebanon, and Watertown, Tenn., hereinafter termed the six complainants, that the rates thereto through Nashville, Tenn., from various points of origin were unduly prejudicial to the six complainants and unduly preferential of Nashville, to the extent that the through rates to those points exceeded the rates contemporaneously maintained to Nashville plus 75 per cent of the contemporaneous local rates beyond. By fourth section order No. 7566, entered in connection with the *Murfreesboro Case*, we denied the carriers' application for authority to continue lower rates to Nashville than to intermediate points. Such lower rates had been maintained for many years on the ground that competition with boat lines operating on the Cumberland, Ohio, and Mississippi rivers materially affected and indeed controlled the rail rates to Nashville.

In the *Murfreesboro Case* we considered traffic from trunk line and New England territories; the Virginia cities; the south Atlantic ports; Atlanta and Macon, Ga., Birmingham, Ala., and other points in southeastern territory; New Orleans, La., and other Gulf ports; Ohio River crossings, Cairo, Ill., to Cincinnati, Ohio, inclusive, and points beyond in central and western trunk line territories; St. Louis, Mo., Memphis, Tenn., and the lower Mississippi River crossings and points beyond in western trunk line territory and the states of Arkansas, Oklahoma, and Texas.

Respondents say that the task of complying with these orders necessitated a general revision of the rate structure of the south and southeast, for the reason that a partial revision to cure certain

conditions condemned in the *Murfreesboro Case* would have created others even more objectionable than those disclosed in that case.

Another reason given by respondents for framing so extensive a readjustment was their belief that we no longer recognize in water competition a factor materially affecting rates in southern territory. This belief seems to be based not only on the *Murfreesboro Case* but also on our decisions in the *Memphis-Southwestern Investigation*, 55 I. C. C., 515, and *Meridian Traffic Bureau v. Director General*, 57 I. C. C., 107. Our fourth section order No. 7542, entered in connection with the *Memphis-Southwestern Investigation*, denied applications to continue class and commodity rates between points in the Mississippi Valley which were lower than rates from, to, or between intermediate points. This is said to be a departure from our former findings in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153. There, by fourth section order No. 3866, we authorized the carriers to continue rates to intermediate points higher than to Mississippi River points, Gulf ports, south Atlantic ports, and numerous other interior points on navigable streams in the south and southeast. Respondents say that since they have been denied authority to continue rates to such points as Nashville, Memphis, and New Orleans lower than to intermediate points, they must conclude that if complaint were made such relief would no longer be continued to many points in the southeast where water competition is less active than it is at the Mississippi River points. They therefore decided that in working out the proposed readjustment their proper course would be to eliminate all considerations of water competition, to put the south and southeast on a so-called "dry-land" basis, and to remove all fourth section departures.

In almost all instances the suspended rates to important points are higher than the present rates. To many intermediate and non-competitive points they are lower than the present rates. Respondents say that the proposed increases would bring rates that are now subnormal and depressed up to a basis which is normal and not higher than is reasonable.

In order to remove the undue prejudice and preference found to exist in the *Murfreesboro Case* respondents in all instances propose to increase the rates to Nashville. Where one of the six complainants is intermediate to Nashville the proposed schedules name in most instances the same rates to both points. Where one of the six is beyond Nashville from a given point of origin the rates thereto are usually less than if constructed by adding to the rate to Nashville 75 per cent of the proposed local rate beyond. Removal of undue prejudice to the six complainants would be effected by the proposed schedules.

Respondents say that in constructing their proposed rates they have not only adhered to the requirements of the fourth section but have been influenced by three other considerations. These are: (1) Distance as a primary consideration; (2) conformity to a uniform percentage relationship of classes;¹ (3) maintenance of the same level of rates in both directions. They also say that because of the limits of time within which to comply with our orders in the *Murfreesboro Case*, they found it impossible to include in their schedules the proposed changes from, to, and between all points in the south and southeast, but that if the suspended rates are approved they will immediately publish other rates, consistent with those here proposed, which will complete the contemplated readjustment.

The chief objections of protestants to respondents' proposals are that the rates are unreasonably high and reflect an improper percentage relationship between classes; that material and unwarranted increases in revenue would result from their adoption; and that the proposed general readjustment would destroy long-standing relationships and materially injure commerce in the south and southeast.

The tariffs under suspension are so comprehensive and cover so wide a territory that discussion will be confined to the more important and representative points of origin and destination. All rates therein are class rates under the southern classification and will be stated in amounts per 100 pounds.

RATES BETWEEN NASHVILLE AND OHIO RIVER CROSSINGS, MEMPHIS, AND ST. LOUIS.

The present rates to Nashville from all the lower Ohio River crossings, Louisville, Ky., to Cairo, inclusive, are the same. The present first-class rate from Cincinnati to Nashville is 23 cents higher than from Louisville. The following are the present rates to Nashville from the crossings named:

Classes.....	1	2	3	4	5	6	A	B	C	D
From Cincinnati...	97	78	65.5	56.5	45.5	40.5	39.5	45.5	28	27
From Louisville....	74	59.5	49	44	34.5	31.5	24	31.5	17.5	15.5
Difference	23	18.5	16.5	12.5	11	9	15.5	14	10.5	11.5

Much evidence was offered by respondents concerning the selection of a proper rate to be used as a key in the adjustment between Ohio and upper Mississippi River crossings and Nashville.

¹ To a great extent the proposed rates are constructed according to the percentages of the so-called "southern standard scale." This scale was formulated by the United States Railroad Administration during federal control for general application in southern classification territory. It was never adopted, and we have never passed upon its reasonableness. Further explanation of this scale and of the percentage relationship of classes appearing thereto will appear later in this report.

The first plan was to work out a concurrent readjustment of the rates in the Mississippi Valley made necessary by our orders in the *Memphis-Southwestern Investigation* and in the *Murfreesboro Case*. The carriers originally intended to use as key a first-class rate of \$1.11 between Cairo and Memphis, 168 miles, and to apply it between Evansville, Ind., and Nashville, 158 miles. Under this plan rates from the south-bank lower Ohio River crossings were to have been made 4 cents under the rates from the north-bank crossings. Thus the rate between Nashville and Louisville, Owensboro, Henderson, and Paducah, Ky., was to have been \$1.07. The rate from Cincinnati, 297 miles, was to have been \$1.34. Like revision was to have been made contemporaneously in rates to other destinations in this territory, including Chattanooga, Tenn., and Huntsville and Decatur, Ala. Traffic to those points by certain routes is handled through Nashville, and unless the rates thereto were revised to a level no lower than that of the rates to Nashville the fourth section would be violated.

The Mississippi Valley readjustment based on this key rate was not carried out. A new key rate of \$1.03 between Cairo and Memphis was adopted. Other rates throughout the Mississippi Valley were constructed on a basis corresponding to the new key rate and are thus lower than originally proposed.

Respondents say that as the Mississippi Valley readjustment was not made in accordance with the original plan, and the rates to Chattanooga, Huntsville, and Decatur are not being increased, that plan was abandoned, and they have "temporarily" adopted the present Cincinnati to Chattanooga rates as maxima to Nashville. The proposed rates from Cincinnati to Nashville are the same as to Chattanooga on classes 1, 2, 3, 4, 6, and A, and lower than to Chattanooga on classes 5, B, C, and D. Respondents also point out that they had to depart from the southern standard percentage relationships on classes 3, 4, and A in order to observe Chattanooga rates as maxima in compliance with the fourth section. They illustrate these facts by the following table:

	Distance.	Classes.									
		1	2	3	4	5	6	A	B	C	D
Present rates: Cincinnati to Chattanooga..	Miles. 339	Cents. 119	Cents. 102	Cents. 80.5	Cents. 74	Cents. 62.5	Cents. 52	Cents. 36.5	Cents. 40	Cents. 30.5	Cents. 33
Proposed rates: Cincinnati to Nashville..	297	119	102	80.5	74	62	52	36.5	48	36	30
Rates according to southern standard percentage relationships.....		119	102	90	76	62	52	42	48	36	30

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The present and proposed rates between Memphis and Nashville, 230 miles, are as follows:

Classes-----	1	2	3	4	5	6	A	B	C	D
Present-----	92.5	70.5	59.5	50	42.5	37.5	28	39.5	17.5	17.5
Proposed-----	117.5	102	84.5	67.5	56.5	40.5	30	39.5	33	27

In making these rates from Memphis to Nashville respondents were held down by the present rates from Memphis to Huntsville. Nashville is intermediate to Huntsville by the route of the Nashville, Chattanooga & St. Louis, and, as respondents were unable to effect a readjustment of the rates to Huntsville, they adopted from Memphis to Nashville, 230 miles, the same rates as those in effect to Huntsville, 216 miles by the direct route of the Southern.

The present and proposed rates between St. Louis and Nashville, 322 miles, are—

Classes-----	1	2	3	4	5	6	A	B	C	D
Present-----	118.5	95.5	80	66.5	53.5	46.5	36.5	46.5	30	25.5
Proposed-----	143	123	109	92	74	63	50	57	43	36

The present rates from St. Louis to Nashville are 42.5 cents higher on first-class than the present rates from the lower Ohio River crossings. The proposed first-class rate from the lower north-bank Ohio River crossings to Nashville is \$1.04.

The rates proposed on the lower classes to Nashville from all the Ohio River crossings, Memphis, and St. Louis are built on the southern standard percentages, except where such percentages would result in class rates higher than those now in effect from such points to Chattanooga, in which case the latter were observed as maxima.

The rates between Clarksville, Tenn., and the lower Ohio River crossings, St. Louis, and Memphis, have also been revised in the proposed schedules. Clarksville is on the Cumberland River, 56 miles northwest of Nashville. Respondents say that for many years Clarksville, like Nashville, has had low competitive rates; and that a consistent revision of the rates between Nashville and the Ohio River, St. Louis, and Memphis, which would comply with the fourth section, requires a similar revision at Clarksville, the rates to which are lower than to intermediate points. In the suspended schedules Clarksville takes the same rates as Nashville, and respondents rely on their justification of the rates to Nashville to justify Clarksville rates.

Respondents submit voluminous comparisons of the proposed rates from Cincinnati with present rates throughout southern territory for approximately the same or greater distances, all of which tend to support the rates proposed. They call attention particularly

to a comparison of the proposed rates from Cincinnati to Nashville with a scale of rates beginning at \$1.19 first class, applicable on the Memphis division of the Southern for a distance of 300 miles, and say that this is known as a low scale in southern territory. A comparison of the proposed rates is also made with the scale of maximum class rates for one-line hauls prescribed by us in *Fourth Section Violations in the Southeast*, 32 I. C. C., 61, increased as authorized by general order No. 28 of the Director General of Railroads and by *Increased Rates, 1920*, 58 I. C. C., 220. The comparison is as follows, the scale being designated as the southeastern scale:

	Dis- tance.	Classes.									
		1	2	3	4	5	6	A	B	C	D
Proposed rates from Cincinnati to Nashville.....	Miles. 297	Cents. 119	Cents. 102	Cents. 90.5	Cents. 74	Cents. 62	Cents. 52	Cents. 36.5	Cents. 48	Cents. 36	Cents. 30
The southeastern class scale.....	300	150	131.5	108	99	80	70.5	59.5	50.5	49	39.5

Respondents also call attention to the fact that the suspended rates from Cincinnati to Nashville are lower than present rates to intermediate points on the direct line of the Louisville & Nashville as shown by the following table:

From Cincinnati to—	Dis- tance.	Status.	Classes.									
			1	2	3	4	5	6	A	B	C	D
Mumfordsville, Ky....	Miles. 182	Pres.....	Cts. 112.5	Cts. 97	Cts. 84.5	Cts. 70.5	Cts. 59.5	Cts. 55	Cts. 49	Cts. 42.5	Cts. 37.5	Cts. 30
Do.....	183	Susp.....	112.5	97	84.5	70.5	59.5	52	36.5	48	36	30
Smith's Grove, Ky....	210	Pres.....	119	102	87.5	78	64.5	59.5	49	65.5	39.5	31.5
Do.....	210	Susp.....	119	101.5	87.5	74	62	52	36.5	48	36	30
Franklin, Ky.....	244	Pres.....	122	105	89.5	81.5	74	67.5	67.5	67.5	40.5	31.5
Do.....	244	Susp.....	119	102	89.5	74	62	52	36.5	48	36	30
Gallatin, Tenn.....	269	Pres.....	122	105	89.5	81.5	70.5	64.5	62.5	67.5	40.5	31.5
Do.....	269	Susp.....	119	102	89.5	74	62	52	36.5	48	36	30
Nashville, Tenn.....	297	Susp.....	119	102	89.5	74	62	52	36.5	48	36	30

For many years there has existed a parity of rates from the lower Ohio River crossings to Nashville and generally to points in southern territory. This results in a distribution of traffic through the various gateways to the south, and from a competitive standpoint the continuation of this equalization appears to be highly desirable for the carriers. There was some testimony from protestants to the effect that rates from these crossings should be fixed according to distance, but no strong contention was made for such an adjustment. Henderson

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is the nearest crossing to Nashville. Owensboro is not a crossing and is so termed for rate-making purposes only. These distances are:

Between Nashville and—	Miles.
Jeffersonville, Ind.-----	189
Louisville, Ky-----	187
Owensboro, Ky-----	140
Henderson, Ky-----	146
Evansville, Ind-----	158
Paducah, Ky-----	162
Cairo, Ill-----	202

Respondents' witness testified that rates from the lower Ohio River crossings were constructed with reference to the rates from Jeffersonville, the latter being made on a differential of 15 cents first class under the rates from Cincinnati in order to limit reductions to intermediate points between Cincinnati and Nashville as much as possible; that the rates from the other north-bank crossings, including Evansville and Cairo, were made the same as from Jeffersonville; that the rates from Henderson were made 4 cents under Evansville rates; and that the rates from Paducah, Owensboro, and Louisville were then made the same as the Henderson rates in order to continue the policy of equalizing the crossings. The justification of the 4-cent differential of Henderson under Evansville, with the resulting differential in favor of the other south-bank crossings, is based on our decision in *Henderson Commercial Club v. I. C. R. R. Co.*, 42 I. C. C., 196, hereinafter referred to as the *Henderson Case*. In that case the carriers were required to establish rates between Henderson and points south of the Ohio River by differentials under Evansville of 3 cents on the first four classes, and 2 cents on classes 5 and 6 of the official classification. River competitive points were excepted, and this accounts for the present equality of rates to Nashville from Evansville and Henderson. Respondents contend that inasmuch as we have found in the *Murfreesboro Case* that river competition should not be considered in the making of rates to Nashville that point now properly comes within the provisions of our order in the *Henderson Case*; and that the proposed differentials of Henderson under Evansville on first class represent the *Henderson Case* differentials plus the increases authorized by *Increased Rates, 1920*.

To justify the proposed rates from Louisville to Nashville respondents introduced comparisons of class rates from many important southern cities, including Chattanooga, Birmingham, Nashville, Montgomery, Ala., Jacksonville and Pensacola, Fla., and Columbus and Macon, Ga., to numerous points for distances approximating that between Louisville and Nashville. In the numbered classes all are higher than the proposed rates. The proposed first-class rate of \$1 from Louisville to Nashville, 187 miles, is also compared with
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first-class rates for 190 miles in the distance scales of several southern lines, which range from \$1.03 to \$1.405.

Comparisons similar to those made in support of proposed Louisville to Nashville rates were made to sustain proposed rates from Henderson and other Ohio River crossings. Respondents also call special attention to the scales of rates recently prescribed by us in *Meridian Traffic Bureau v. S. Ry. Co.*, 60 I. C. C., 5, for application between Meridian, Miss., and points in Alabama for distances up to 200 miles. In the case cited two scales were prescribed, one for application on the Mobile & Ohio and the other on the Southern and Alabama Great Southern. Both show for comparable distances rates higher than those proposed from the Ohio River crossings to Nashville. Another comparison relied upon by respondents to support their proposed rates from the Ohio River crossings to Nashville is that based on the scales of rates prescribed by us for application in the southwest in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, 345; *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105; and the *Memphis-Southwestern Investigation*.

These scales are governed by western classification, which, on the whole, has higher ratings than the southern classification, a fact recognized in *Consolidated Classification Case*, 54 I. C. C., 1. But as tending to show, despite the difference in classification, that the rates proposed are properly comparable with the scales in the southwest, respondents submit statements compiled from operating statistics filed with us for the fiscal years ended June 30, 1913, 1914, 1915, and 1916, and the calendar years ended December 31, 1916, and 1917, of representative southwestern roads and similar statements for representative roads in the southern district. These years, they say, were selected as reflecting conditions less disturbed than those in more recent years.

Protestants make vigorous objection to the conclusions sought to be drawn from these exhibits and contend that certain strong roads included, such as the Chicago, Rock Island & Pacific, Missouri Pacific, and others, are western or transcontinental rather than southwestern lines; that more recent years should have been taken; and that the figures are not representative of present-day conditions. They in turn submit statistical data as tending to show that the traffic density in the southern district is much higher than in the southwest. They also show that the density of population is greater in the southern district than in the southwest.

In further support of the comparisons made with southwestern scales respondents caused the traffic moving into Nashville from or through Cincinnati, Louisville, Evansville, and East St. Louis, Ill., for the first week in September, 1920, to be rated according to

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western classification, applied thereto the scale of rates prescribed by us in *Memphis-Southwestern Investigation*, and compared the resulting revenue with that which would result from application of the proposed rates from and through these points. In this manner they arrived at revenues of \$15,820.94 under the *Memphis-Southwestern* scale, and \$11,750.44 under the proposed rates.

Protestants compare the proposed rates from the Ohio River crossings with lower rates from Virginia cities to points in North Carolina for distances about the same as or greater than those from the Ohio River cities to Nashville. They instance a first-class rate from Richmond, Va., of 95.5 cents to Goldsboro, N. C., 168 miles, and to Winston-Salem, N. C., 217 miles.

Examination of the many class rates compared by respondents with their proposed rates from the Ohio River crossings discloses rates on some classes for distances under 200 miles which exceed the maximum scale prescribed by us for application between intermediate points for distances of 300 miles in *Fourth Section Violations in the Southeast*, 32 I. C. C., 61, after including the two general increases. Furthermore, the rates compared, although considerably higher in the numbered classes than proposed rates from the Ohio River crossings, are frequently lower in the lettered classes.

Respondents' witnesses testified that their purpose throughout this readjustment is to preserve existing revenue, not to increase it. The increases proposed from Evansville, Henderson, and other lower Ohio River crossings to Nashville are substantial, and would affect a volume of tonnage far exceeding that moving to intermediate points. The decreases proposed to these intermediate points, generally on a smaller number of classes, are less in amount and, affecting as they would a lesser tonnage, could hardly offset the effect of the increases on respondents' revenue. The tables below are illustrative:

From Louisville to—	Distance.	Status.	Classes.											
			1	2	3	4	5	6	A	B	C	D		
Munfordville, Ky.....	Miles. 73	Pres.....	Cts. 74	Cts. 84.5	Cts. 86.5	Cts. 50	Cts. 45.5	Cts. 42.5	Cts. 36.5	Cts. 42.5	Cts. 28	Cts. 20.5		
Do.....	73	Susp.....	74	84.5	86.5	50	45.5	42.5	35	40	28	20.5		
Smith's Grove, Ky....	81	Pres.....	86.5	74	65.5	58	50	47	36.5	47	31.5	24		
Do.....	81	Susp.....	86.5	74	65.5	58	50	44	35	40	30	24		
Franklin, Ky.....	134	Pres.....	86.5	74	65.5	58	50	47	36.5	47	31.5	24		
Do.....	134	Susp.....	86.5	74	65.5	58	50	44	35	40	30	24		
Gallatin, Tenn.....	159	Pres.....	86.5	74	65.5	58	50	47	36.5	47	31.5	24		
Do.....	159	Susp.....	86.5	74	65.5	58	50	44	35	40	30	24		
Madison, Tenn.....	178	Pres.....	86.5	74	62.5	56.5	45.5	40.5	33	40.5	25	24		
Do.....	178	Susp.....	100	86	76	64	52	44	35	40	30	25		
Nashville, Tenn.....	187	Pres.....	74	59.5	49	44	34.5	31.5	24	31.5	17.5	15.5		
Do.....	187	Susp.....	100	86	76	64	52	44	35	40	30	25		

From Evansville to—	Dis- tance.	Status.	Classes.									
			1	2	3	4	5	6	A	B	C	D
Pembroke, Ky.....	Miles. 95	Pres.....	Cts. 84.5	Cts. 74	Cts. 65.5	Cts. 58	Cts. 53	Cts. 45.5	Cts. 36.5	Cts. 40	Cts. 33	Cts. 24
Do.....	95	Susp.....	84.5	74	65.5	58	53	45.5	36.5	42	31	24
Adams, Tenn.....	116	Pres.....	90.5	78	70.5	62.5	55	50	36.5	40	31.5	27
Do.....	116	Susp.....	90.5	78	70.5	62.5	53	46	36	42	31	26
Springfield, Tenn.....	128	Pres.....	90.5	78	70.5	62.5	55	50	36.5	40	33	27
Do.....	128	Susp.....	90.5	78	70.5	62.5	53	46	36	42	31	26
Madison, Tenn.....	149	Pres.....	92.5	78	62.5	55.5	45.5	40.5	33	40.5	35	24
Do.....	149	Susp.....	104	80	70	67	54	46	36	42	31	26
Nashville, Tenn.....	158	Pres.....	74	50.5	40	44	34.5	31.5	24	31.5	17.5	15.5
Do.....	158	Susp.....	104	80	70	67	54	46	36	42	31	26

Respondents support their proposed rates from St. Louis and Memphis to Nashville by comparisons similar to those used for rates from the Ohio River. Their proposed differential of 39 cents, St. Louis over the lower north-bank Ohio River crossings, is the same as that in the present rates from St. Louis to the southeast.

Protestants contend that a reasonable first-class rate to Nashville from Cincinnati should not exceed \$1.07, and from all the lower crossings 84 cents, with lower classes bearing the same percentage relationship as was observed in the recent Mississippi Valley readjustment referred to above.

They arrive at these figures by fixing a first-class rate of \$1.19 from St. Louis to Nashville, 322 miles, the same as now in effect from Cincinnati to Chattanooga for 336 miles. From this they deduct 35 cents, approximately the present differential of St. Louis over Cairo to Mississippi Valley destinations, and would apply the rate of 84 cents thus obtained from all lower Ohio River crossings. In support of its reasonableness they say that it happens to be the average of present first-class rates to the highest-rated intermediate points between all lower crossings and Nashville. They would then make rates from Cincinnati by adding its existing differential of 23 cents over Louisville. This would result in a first-class rate of \$1.07 from Cincinnati to Nashville. Such an adjustment, they say, would be consistent with *Receivers & Shippers Asso. v. C., N. O. & T. P. Ry. Co.*, 18 I. C. C., 440, wherein we fixed a maximum scale applicable between Cincinnati and Chattanooga, commencing at 70 cents first class. This scale, prescribed in 1910 and increased according to general order No. 28 and *Increased Rates, 1920*, is their chief test of reasonableness throughout this entire proceeding.

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RATES FROM THE SOUTHEAST.

For many years prior to the effective date of our fourth section order No. 3866 under *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, the carriers had in effect in the southeast a basing-point system of rates. Under that system relatively low rates were maintained between Ohio and Mississippi river crossings and related points, on the one hand, and south Atlantic ports, interior river cities such as Augusta, Ga., Macon, Columbus, and Montgomery, and certain interior competitive cities, such as Atlanta, Birmingham, and Athens, Ga. Rates to other junction points and local stations were made by combination on these basing points. Our orders in that case permitted the carriers to continue rates to the south Atlantic ports and to certain water-competitive points lower than to intermediate points, but denied them similar authority in respect of rates to Atlanta, Birmingham, and other former basing points, where no similar competition prevailed. Thereupon the carriers entered upon a revision of their tariffs in conformity with these orders, and the schedules published effective January 1, 1916, purported to be in partial compliance therewith. These did not include any rates to South Carolina or any northbound rates. Respondents say that the intervening period of federal control prevented the establishment of the remaining rates, which, for northbound application, were to have been the same as were established January 1, 1916, southbound.

In the light of our findings in the *Murfreesboro Case* and the *Memphis Southwestern Investigation*, the carriers have changed their original plans and, as already stated, have construed those decisions as indicating that they will not long be permitted to maintain rates to or from interior river points and south Atlantic ports lower than to or from intermediate points. They therefore propose northbound rates constructed in strict conformity with the fourth section of the act, and express the intention, if these are approved, to establish the same rates southbound. The schedules under suspension do not contain rates to the southeast.

Respondents take as bases for their southeastern readjustment the present rates from Cincinnati to Birmingham and Atlanta. They drop the fraction from first class and fix the others upon the southern standard percentages. Adoption of that percentage relationship results in material increases in the lettered classes, although respondents state that they merely propose in these suspended tariffs to charge from Atlanta and Birmingham to Ohio River crossings the same rates that were published southbound effective January 1, 1916, with the two authorized increases of June 25, 1918, and August 26, 1920, under general order No. 28 and *Increased Rates, 1920*, added. The fol-

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lowing table illustrates the excess of the suspended northbound rates over present northbound and southbound rates in the lettered classes:

Between—	Classes.									
	1	2	3	4	5	6	A	B	C	D
Cincinnati and Atlanta:	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
Present southbound.....	167.5	144	127	106.5	87.5	72	50	39.5	45.5	39.5
Suspended northbound.....	167	144	127	107	87	72	58	67	50	42
Present northbound.....	167.5	144	127	106.5	87.5	72	44	55	44	37.5
Louisville and Atlanta:										
Present southbound.....	167.5	144	127	106.5	87.5	72	50	59.5	45.5	39.5
Suspended northbound.....	167	144	127	107	87	72	58	67	50	42
Present northbound.....	167.5	144	127	106.5	87.5	72	44	55	44	37.5
St. Louis and Atlanta:										
Present southbound.....	216.5	185.5	163.5	133.5	110	90	65.5	76.5	60	50
Suspended northbound.....	206	177	157	122	107	91	72	82	62	52
Present northbound.....	226.5	192	168.5	136.5	112.5	92.5	58.5	72	58.5	48.5
Memphis and Atlanta:										
Present southbound.....	161.5	137.5	120.5	100	81.5	65.5	44	53	39.5	33
Suspended northbound.....	160	138	122	102	83	70	56	64	48	40
Present northbound.....	166.5	137.5	120.5	98.5	75	59.5	39.5	50	44	34.5
Cincinnati and Birmingham:										
Present southbound.....	167.5	144	127	106.5	87.5	72	50	59.5	45.5	39.5
Suspended northbound.....	167	144	127	107	87	72	58	67	50	42
Present northbound.....	139.5	124	106.5	96.5	74	56.5	50	52	40.5	34.5
Louisville and Birmingham:										
Present southbound.....	152	128	111.5	94	77	62.5	44	56.5	42.5	36.5
Suspended northbound.....	152	131	116	97	79	67	53	61	46	38
Present northbound.....	124	108	90.5	74	62.5	47	44	49	37.5	31.5
St. Louis and Birmingham:										
Present southbound.....	200	168.5	144.5	120	98.5	80	58.5	73.5	56.5	46.5
Suspended northbound.....	191	164	145	122	99	84	67	76	57	48
Present northbound.....	178.5	153.5	130	102	86.5	68.5	58.5	65.5	52	42
Memphis and Birmingham:										
Present southbound.....	186.5	112.5	95.5	81.5	65.5	53	37.5	50	36.5	30
Suspended northbound.....	187	118	104	88	71	60	48	55	41	34
Present northbound.....	117.5	102	84.5	67.5	56.5	46.5	37.5	42.5	28	25

The present rates from Cincinnati to Birmingham and Atlanta are on an equality. This is in conformity with *Atlanta Freight Bureau v. N., C. & St. L. Ry.*, 29 I. C. C., 476, decided February 3, 1914, hereinafter referred to as the *Atlanta Case*. The rates to Birmingham and Atlanta from the lower Ohio River crossings were also considered in that case, and we found that it was not unjustly discriminatory or unduly prejudicial to maintain lower scales of rates from lower Ohio River crossings to Birmingham than to Atlanta. The differentials in effect at the time of that decision began at 10 cents on first class. These differentials were continued in the rates published January 1, 1916, as a result of *Fourth Section Violations in the Southeast*. With the increases authorized by general order No. 28 and *Increased Rates, 1920*, the present differential of 15.5 cents on first class is obtained. It is the intention of respondents in equalizing the northbound and southbound rates to give to Birmingham, on rates to the lower Ohio River crossings, substantially the same differential that has applied for years to southbound rates. Thus the proposed first-class rate from Atlanta to Louisville is \$1.67, whereas the proposed first-class rate from Birmingham to Louisville is \$1.52.

From Birmingham and Atlanta to Memphis the proposed first-class rates fairly approximate present southbound rates; on the other numbered classes they are somewhat higher; and on the lettered classes proposed rates are materially higher than present southbound rates. Memphis to Birmingham rates are now constructed on a differential under Louisville similar to the differential of Louisville under Cincinnati in the rates to Birmingham, the method suggested by us in the *Atlanta Case*.

The proposed rates to St. Louis from Birmingham are lower than present southbound rates on the first three classes and higher on the remaining classes. From Atlanta they are lower on the first five classes than present southbound rates, but higher on all other classes. Respondents state that for many years the differentials of St. Louis over the Ohio River have varied in the making of rates from the southeast, and that the proposed adjustment will establish on first class a uniform differential of 39 cents, the same as that in the present southbound rates from St. Louis and the Ohio River to the southeast.

To Nashville the proposed rates from Birmingham, Atlanta, and all points in the southeast are made a differential of 30 cents on first class under Louisville. Respondents assert that as far back as 1882 rates between Nashville and the southeast were made on a scale of differentials under Louisville rates, commencing at 35 cents on first class. This basis continued until January 1, 1916, when, in compliance with fourth section order No. 3866, southbound rates were established which fixed a differential of 27 cents on first class from Nashville to the southeast, except to the south Atlantic ports and Montgomery territory, which were respectively made by differentials on first class of 15 cents and 22 cents under Louisville rates. In the proposed readjustment respondents disregard the former northbound differential of 35 cents with the added increases of general order No. 28 and *Increased Rates, 1920*, and fix the rates to Nashville on a new differential basis. The following table shows present and proposed rates from Birmingham and Atlanta to Nashville together with present rates from Nashville to those points:

Between—	Classes.									
	1	2	3	4	5	6	A	B	C	D
Atlanta and Nashville:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Present northbound.....	112.5	97	87.5	72	59.5	52	31.5	42.5	33	27
Proposed northbound.....	137	118	104	88	71	60	48	55	41	34
Present southbound.....	125	108	95.5	80	65.5	55	42.5	52	37	30.5
Birmingham and Nashville:										
Present northbound.....	99	84.5	70.5	56.5	47	34.5	31.5	36.5	27	20.5
Proposed northbound.....	122	105	93	78	63	54	43	49	37	31
Present southbound.....	117.5	96.5	81.5	70.5	56.5	47	31.5	44	37	27.5

The use of the 30-cent differential would result in increasing all rates northbound above the present southbound rates.

The present rates from Montgomery and Selma, Ala., to Cincinnati are the same, first class being \$1.69. The proposed rates to Cincinnati are made higher by a differential of 15 cents on first class than the proposed Birmingham first-class rate.

The present rates from Macon to Cincinnati are substantially the same as the present Atlanta to Cincinnati rates. The proposed rates are built on a first-class differential of 15 cents over Atlanta, and thus become the same as the proposed rates from Montgomery and Selma. The relative distances of these cities from Cincinnati are about the same, Montgomery being 96 miles farther than Birmingham and Macon 88 miles farther than Atlanta.

From Augusta to Cincinnati the present rates are approximately the same as from Atlanta. The proposed first-class rate from Augusta has been constructed on a differential of 13 cents higher than the first-class rate from Macon, with the following result:

Classes	1	2	3	4	5	6	A	B	C	D
Rates	195	168	148	125	101	86	68	78	59	49

This differential is said to conform to other changes as the average distance from Augusta to Cincinnati is 636 miles and exceeds the average distance from Macon by 82 miles.

The present rates to Cincinnati from the south Atlantic ports, including Savannah and Brunswick, Ga., Charleston, S. C., and Jacksonville, are:

Classes	1	2	3	4	5	6	A	B	C	D
Rates	149	125	117.5	109.5	90.5	72	55	59.5	45.5	42.5

The proposed rates from these ports are made on a differential of 20 cents, first class, over those proposed from Augusta, as follows:

Classes	1	2	3	4	5	6	A	B	C	D
Rates	215	185	163	138	112	95	75	86	65	54

This differential is based on the facts that the average distance to Cincinnati from Charleston is 775 miles, 139 miles greater than the average distance from Augusta, and the average distance from Savannah is 741 miles or 105 miles greater than from Augusta.

The present rates to Louisville, as representative of all lower Ohio River crossings, from Montgomery and Selma are:

Classes	1	2	3	4	5	6	A	B	C	D
Rates	153	144	122	99	81.5	64.5	44	49	37.5	31.5

The proposed rates from these two cities to Louisville have been made on a differential of 15 cents on first class less than to Cincinnati.

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The present rates from Macon, Augusta, and south Atlantic ports to Louisville are the same as to Cincinnati, and so are the proposed rates.

The present rates from Montgomery and Selma to Memphis are:

Classes.....	1	2	3	4	5	6	A	B	C	D
Rates.....	147	137.5	115.5	92.5	75	58	37.5	42.5	31.5	25

Those proposed are made on a differential of 15 cents on first class under the proposed rates from these cities to Louisville.

From Macon and Augusta the present rates to Memphis are:

Classes.....	1	2	3	4	5	6	A	B	C	D
Rates.....	161.5	142.5	125	100	81.5	65.5	42.5	53	47	37.5

The proposed rates are constructed on a differential basis similar to that used in making rates from these points to the Ohio River crossings. That is, from Macon the proposed rates to Memphis are made on a differential of 15 cents on first class over Atlanta, and from Augusta the rates proposed are on a differential of 13 cents over Macon.

To Memphis the present rates from south Atlantic ports are the same as to Ohio River crossings. The proposed rates are made a differential of 20 cents on first class higher than the proposed rates from Augusta to Memphis, in accord with the method used in constructing proposed rates to the Ohio River crossings.

The present rates to St. Louis from Montgomery, Selma, Macon, Augusta, and Savannah are:

To St. Louis from—	Classes.									
	1	2	3	4	5	6	A	B	C	D
Montgomery, Ala. ¹	<i>Cents.</i> 210	<i>Cents.</i> 192	<i>Cents.</i> 158.5	<i>Cents.</i> 123.5	<i>Cents.</i> 100	<i>Cents.</i> 86.5	<i>Cents.</i> 58.5	<i>Cents.</i> 66.5	<i>Cents.</i> 52	<i>Cents.</i> 42
Macon, Ga. ²	225.5	192	168.5	136.5	112.5	92.5	58.5	75.5	62	52
Augusta, Ga. ²	225.5	192	168.5	136.5	112.5	92.5	58.5	75.5	62	52
Savannah, Ga. ²	205.5	172	158.5	140	116.5	92.5	70	76.5	60	53.5

¹ Present rates from Selma the same.

² As representative of all south Atlantic ports.

The proposed rates from these and all other points in the southeast are made on a uniform differential of 39 cents on first class over those to Louisville. Respondents' witnesses testified that prior to June 25, 1918, rates to St. Louis from the southeast took a uniform differential on first class of 28 cents higher than to Louisville, and that considering the increases authorized by general order No. 28 and *Increased Rates, 1920*, the former differential exceeds that proposed.

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The present rates to Nashville from Montgomery, Selma, Macon, Augusta, and south Atlantic ports are:

To Nashville from—	Classes.									
	1	2	3	4	5	6	A	B	C	D
Montgomery, Ala. ¹	Cts. 99	Cts. 97	Cts. 83	Cts. 64.5	Cts. 53	Cts. 44	Cts. 31.5	Cts. 26.5	Cts. 27	Cts. 20.5
Macon, Ga.....	112.5	97	87.5	72	56.5	52	31.5	26.5	26.5	20
Augusta, Ga.....	119	103	90.5	75	67.5	52	31.5	26.5	26.5	20
Savannah, Ga. ²	146.5	125	111.5	94	78	64.5	49	38	44	32.5

¹ Present rates from Selma the same.

² As representative of all south Atlantic ports

The proposed rates to Nashville from the southeast are made on a differential basis of 30 cents on first class under Louisville, as has been explained in connection with the proposed rates from Birmingham and Atlanta to Nashville.

It thus appears that the rates proposed from southeastern cities are in all instances materially higher than the present rates. There is also no similarity between the present southbound and the proposed northbound rates except from Birmingham and Atlanta. On the contrary, the northbound rates are, with unimportant exceptions, materially higher. This is illustrated by the following table:

Between—	Classes.									
	1	2	3	4	5	6	A	B	C	D
Montgomery and Cincinnati: ¹	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Present southbound rates.....	169	152	137.5	109.5	89.5	74	53	50.5	45.5	39.5
Suspended northbound rates..	182	157	138	116	95	80	64	73	55	46
Montgomery and St. Louis:										
Present southbound rates.....	202	176.5	158.5	123.5	100	82	62	75.5	56.5	46.5
Suspended northbound rates..	206	177	157	132	107	91	72	82	62	52
Montgomery and Memphis:										
Present southbound rates.....	147	130	115.5	90.5	72	58	40.5	50	36.5	30
Suspended northbound rates..	152	131	116	97	79	67	53	61	46	38
Macon and Cincinnati:										
Present southbound rates.....	167.5	144	127	106.5	87.5	72	53	62.5	49	42.5
Suspended northbound rates..	182	157	138	116	95	80	64	73	55	46
Macon and St. Louis:										
Present southbound rates.....	216.5	185.5	163.5	123.5	110	90	68.5	80	63.5	53.5
Suspended northbound rates..	221	190	168	141	115	97	77	88	66	56
Macon and Memphis:										
Present southbound rates.....	161.5	137.5	120.5	100	81.5	65.5	47	56.5	42.5	36.5
Suspended northbound rates..	175	151	133	112	91	77	61	70	58	44

¹ Selma takes same rates.

As the proposed southeastern readjustment is constructed in relation to the present Cincinnati to Atlanta rates, respondents rely thereon to a great extent to establish the reasonableness of what they propose. In order to show that these pivotal Cincinnati to Atlanta rates afford a proper measure of reasonableness, respondents en-

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deavor to trace their history. This was fully stated in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153. When that case was decided a scale of rates beginning at 98 cents on first class was in effect, and in discussing them we said, page 828:

While these rates [including Atlanta rates] are relatively higher than the rates to the south Atlantic ports and are slightly higher than the rates to the river points, Augusta, Montgomery, Memphis, or Columbus, they are, however, less than the average rates for like distances in this territory made to noncompetitive points. * * * As compared, therefore, with rates to noncompetitive points in this territory they are subnormal.

This language was construed by the carriers as an invitation to increase the rates then in effect; and, effective January 1, 1916, as part of the southbound revision made at that time, they published rates from Cincinnati to Atlanta commencing at \$1.07 first class. Respondents state that these rates were permitted to go into effect without suspension, and from this fact seek to deduce their reasonableness and our approval as well. They assert that these rates were never condemned, and that the present rates are the rates established January 1, 1916, plus the increases authorized by general order No. 28 and *Increased Rates, 1920*. They admit that these rates were under attack in No. 9516, *Southeastern Rate Adjustment*, discontinued February 10, 1920.

Protestants object to the use of present Cincinnati to Atlanta rates as a basis upon which to reconstruct rates in the southeast. They contend that those rates are unreasonably high, and in support of this contention compare them with present Cincinnati to Chattanooga rates, as shown in the following table:

Cincinnati to—	Distances.	Classes.									
		1	2	3	4	5	6	A	B	C	D
Chattanooga.....	Miles. 836	Cents. 119	Cents. 102	Cents. 89.5	Cents. 74	Cents. 62.5	Cents. 52	Cents. 36.5	Cents. 49	Cents. 39.5	Cents. 33
Atlanta.....	474	167.5	144	127	106.5	87.5	72	50	59.5	45.5	39.5

They also contend that rates to Atlanta should be so constructed as to progress over Chattanooga rates in a more logical manner, and that under the present adjustment ton-mile earnings to Atlanta fairly approximate on some classes ton-mile earnings to Chattanooga. Protestants further point out that present Cincinnati to Chattanooga rates are in excess of what they would be if constructed according to the scale commencing at 70 cents first class prescribed by us for application between those points in *Receivers & Shippers Assn. v. C., N. O. & T. P. Ry. Co., supra*. Both on brief and upon oral argument protestants vigorously contended for the restoration of a scale

between Cincinnati and Chattanooga which would represent the scale prescribed by us with authorized increases added. If the scale prescribed in 1910 were the basis for present rates, the first-class rate from Cincinnati to Chattanooga would be \$1.095 instead of \$1.19. The present rate results from increasing the 70-cent rate by 6 cents after our order expired. The reasonableness of present rates to Chattanooga is not in issue in this proceeding. The reasonableness of both present and proposed Atlanta rates is in issue.

Respondents contrast many of the proposed rates with relatively higher rates in effect between southeastern points for comparable distances, chiefly rates from Louisville and Cincinnati to a large number of points between Birmingham and Atlanta and as far south as Columbus. These comparisons are for the most part in the numbered classes only, and throw little light on the reasonableness of the lettered classes, which are those chiefly affected by respondents' revision. Respondents also compare proposed rates with the scale prescribed in the *Memphis-Southwestern Investigation*, and, in support of their proposed rates from the south Atlantic ports, rely on comparisons made to sustain those from other southeastern cities and on the rates in effect from southern Georgia to the Ohio River crossings.

Protestants compare the proposed rates from southeastern cities with existing rates which are relatively lower. Thus, the present first-class rate of \$1.63 from Mobile, Ala., to Cairo, 562 miles, is compared with the proposed first-class rate of \$1.67 from Montgomery and Selma to Cairo, 432 miles. Montgomery and Selma are intermediate between Mobile and Cairo. The present Mobile to St. Louis first-class rate of \$2.03 for 654 miles is compared with the proposed rate of \$2.06 from Montgomery and Selma to St. Louis, 584 miles. To Memphis the present first-class rate from Mobile is 14.5 cents lower than the proposed rate from Montgomery although the distance from Mobile is 48 miles greater.

Protestants also point out that the proposed rates from the south Atlantic ports to the Ohio and Mississippi river crossings are materially higher than present rates from Gulf ports, and refer to the relationship which has existed for years in rates from south Atlantic and Gulf ports. They insist that the effect of the proposed rates would be injurious to shippers and carriers alike.

RATES FROM GULF PORTS.

Rates to Nashville from New Orleans, Mobile, and Pensacola are the same. The present and proposed rates are:

Classes -----	1	2	3	4	5	6	A	B	C	D
Present -----	140.5	117.5	102	78	62.5	55	39.5	39.5	39.5	36.5
Proposed -----	171	147	130	109	89	75	60	68	51	48
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Rates from the Gulf ports to the Ohio River crossings, Memphis, and St. Louis were recently readjusted to conform with the requirements of the fourth section under our orders in the *Memphis Southwestern Investigation*.

Respondents attempt to justify the reasonableness of these proposed rates by comparisons similar to those offered in support of proposed rates from the southeast. Protestants contend that the rates from New Orleans to Nashville, 562 miles, should not exceed present rates beginning at \$1.63 first class from New Orleans to Cairo, 550 miles.

RATES FROM EASTERN CITIES.

The present rates from New York, N. Y., and Boston, Mass., to Nashville are:

Classes-----	1	2	3	4	5	6	A	B	C	D
Rates-----	166.5	133.5	105.5	78.5	66.5	60	60	68.5	60	60

These rates were originally established to meet the water competition on the Ohio and Cumberland rivers. They were made by adding to the trunk lines' rates from the east to the Ohio River crossings an arbitrary or proportional rate which resulted in a total rate to Nashville approximately the same as the rail-and-water rate. Later joint all-rail rates governed by official classification were published from eastern points to Nashville. The rail rates from Boston applicable in connection with the boat lines operating on the Cumberland and Ohio rivers were the same at the time as the all-rail rates from New York, and therefore the carriers, in constructing the joint all-rail rates, made the same rates applicable from Boston as from New York. When a revision of the rates in this territory was made January 1, 1916, under our fourth section order No. 3866, the rates from the east to Nashville were made subject to southern classification and continued on a basis lower than rates to numerous intermediate points under the protection of the carriers' fourth section applications, which had not been passed on in so far as Nashville was concerned, in *Fourth Section Violations in the Southeast*. The present rates are those established January 1, 1916, with the two increases added authorized by general order No. 28 and *Increased Rates, 1920*. The proposed rates to Nashville have been constructed on the basis of present rates to Decatur. The present all-rail rates from New York and Boston to Decatur, to which Nashville is intermediate, are:

Classes-----	1	2	3	4	5	6	A	B	C	D
From New York-----	210	180	158.5	135.5	110	90	73.5	88.5	73.5	66.5
From Boston-----	218.5	186.5	165.5	140	115.5	93.5	76.5	92	76.5	70

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The present rates from New York and Boston to Birmingham are:

Classes-----	1	2	3	4	5	6	A	B	C	D
From New York----	218.5	186.5	165.5	142	115.5	95.5	76.5	95.5	75.5	68.5
From Boston-----	226.5	193.5	172	146.5	120	98.5	80	98.5	78.5	72

Respondents' witnesses testified that as water competition is no longer to be regarded as an influence warranting a depression of rates to Nashville, they originally decided that proper and normal rates to Nashville would be the present rates from New York and Boston to Birmingham. But these they could not establish because the lower rates to Decatur would have resulted in fourth section departures which this revision is intended to completely eliminate.

From Boston the proposed rates are made higher by a differential of 8.5 cents first class than the proposed rates from New York, and substantially the same as rates in effect from Boston to Decatur and from New York to Birmingham. Respondents state that these proposed rates are only temporary and that they intend ultimately to establish rates to Nashville from New York and Boston the same as the present rates from those points to Birmingham.

In justification of the proposed differential of 8.5 cents Boston over New York respondents rely on the fact that the distance from Boston is 212 miles greater than from New York. They emphasize the fact that the present rates from Boston to Decatur, Birmingham, Chattanooga, Knoxville, Tenn., Atlanta, and all southeastern points, are made on a differential over New York substantially the same as that proposed. Respondents further submit that they are not obliged to maintain to Nashville the trunk line policy of equalizing rates from New York and Boston. The propriety of maintaining a differential from Boston over New York in constructing rates to southeastern territory is now being considered by us in No. 9148, *Boston Chamber of Commerce v. Ocean S. S. Co.*

The present rates from Philadelphia, Pa., to Nashville reflect a differential of 10 cents on first class under those from New York. The proposed rates from Philadelphia drop the differential and are the same as those proposed from New York. Respondents contend that this proposal is consistent with the present basis of making rates from Philadelphia to points in the Carolinas, southeastern territories, and portions of Mississippi Valley territory which now take the same rates from Philadelphia as from New York. They further rely on the *Atlanta Case*, in which we noted the absence of differentials from Philadelphia under New York in Atlanta rates, but expressed no opinion as to the propriety of the adjustment.

The present rates from Baltimore, Md., to Nashville are:

Classes-----	1	2	3	4	5	6	A	B	C	D
Rates -----	153.5	125.5	100	73.5	62	55.5	55.5	62	55.5	55.5

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The present differentials under New York reflect the trunk line differential adjustment. The proposed rates from Baltimore to Nashville are constructed on substantially the same basis of differentials under New York as now applies to points in southeastern territory from Baltimore. The proposed rates are:

Classes.....	1	2	3	4	5	6	A	B	C	D
Rates.....	198.5	170	150	126.5	103.5	85.5	70	83.5	68.5	62

It is testified that these rates are the same as those now in effect from Baltimore to Decatur, Chattanooga, and Harriman, Tenn., and other cities less distant than Nashville.

Protestants' chief objection to the proposed rates from eastern cities is to the differential of Boston over New York. They say that the long-existing parity in rates from these two cities to Nashville should be continued. They admit that some increases would be justified. They further point out that the suspended schedules contain no revision of rates to Paducah. The present first-class rate to Paducah from New York is \$1.89. They urge that the proposed increase in rates to Nashville will create fourth section violations because Nashville is intermediate to Paducah by the route of the Nashville, Chattanooga & St. Louis.

RATES FROM VIRGINIA CITIES.

Norfolk and Newport News, Va., are representative Virginia cities. The present and proposed rates to Nashville from these cities, which take the same rates, are:

Classes	1	2	3	4	5	6	A	B	C	D
Present	144	117.5	94	69	58	52	52	53	52	52
Proposed	178	153	134.5	112.5	92.5	75	61.5	72	59.5	53

The present rates are those published January 1, 1916, plus the two increases authorized by general order No. 28 and *Increased Rates, 1920*. The proposed rates are temporary, respondents say, as their intention is ultimately to restore a closer rate relationship between the Virginia cities and Baltimore. The proposed rates to Nashville are the same as the present rates from Norfolk to Decatur. The distances from Norfolk to Nashville and Decatur are approximately the same. Traffic from Virginia cities to Nashville and Decatur moves through Knoxville. From Knoxville to Nashville the short-line distance is 217 miles and to Decatur 238 miles.

RATES FROM CAROLINA TERRITORY.

Respondents say that the orders entered in the *Murfreesboro Case* did not specifically include rates from the Carolinas, but in making the revision from Virginia cities they deemed it consistent to make a similar revision from the Carolinas, although the latter is not com-

plete as rates from such points as Charlotte, N. C., and Spartanburg, S. C., have not been revised but will be as promptly as possible. The present rates from Winston-Salem, Goldsboro, Greensboro, and Salisbury, selected as representative North Carolina cities, are the same as those from the Virginia cities cited. The basis of revision from the North Carolina and the Virginia cities is the same. In *Corporation Commission of N. C. v. Director General*, 57 I. C. C., 523, we found that rates from North Carolina to destinations in the southeast, including Tennessee, should be constructed on differentials under the Virginia cities, but this case has been reopened and the order indefinitely postponed.

RATES PROPOSED BY NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

The short-line route from Chattanooga to Nashville is that of the Nashville, Chattanooga & St. Louis, hereinafter termed the N., C. & St. L. The distance is 151 miles. The present and proposed rates are:

Classes	1	2	3	4	5	6	A	B	C	D
Present	64.5	55	50	39.5	34.5	27	25	28	28	22
Proposed	109.5	94	84.5	69	58	42.5	28	37.5	33	27

Respondents compare these proposed rates with the several scales prescribed by us for application in southwestern territory and those prescribed in *Meridian Traffic Bureau v. S. Ry. Co.*, *supra*. Here again respondents adduce evidence to show that scales governed by the western and southern classifications are properly comparable, and that operating conditions in the southwest and the south are substantially similar.

Protestants compare the proposed rates with many relatively lower rates now in effect in the same general territory. Thus, the present first-class rate from Chattanooga to Augusta is \$1.065 for 308 miles, and to Atlanta 81.5 cents for 137 miles. Other comparisons made by them demonstrate that the proposed rates are higher than many rates for like or greater distances throughout the southeast. The present first-class rate from Nashville to Chattanooga is 86.5 cents. This would become \$1.095 under the suspended tariffs.

The N., C. & St. L. has proposed in the suspended tariffs not only increases in specific rates for important points but also a distance scale as substitute for the many and varying scales now applied on different portions of its system. Rates on the lower classes are said to be constructed on the southern standard percentages. The proposed scale appears in the Appendix. It would not apply on the leased line from Chattanooga to Atlanta and is confined almost entirely to the states of Tennessee and Alabama.

Respondents' witness testified that the existing N., C. & St. L. system represents a consolidation of 23 separate carriers. The present rate structure retains in large measure the characteristics, physical and otherwise, of the original carriers. In the existing scales distance is a secondary factor. Their measure is said to be controlled in the main by operating conditions affecting certain localities or by water or rail competition encountered at certain points.

Respondents say that conditions prevent full use of the distance scale between certain points on its lines, and for that reason it represents maximum figures only. This is illustrated by the following table, which shows the specific rates proposed from Memphis to Nashville, 237.9 miles, the single-line mileage over the N., C. & St. L. Ry., and the scale for that distance:

Classes	1	2	3	4	5	6	A	B	C	D
Proposed specific rates	117.5	102	84.5	67.5	56.5	40.5	30	39.5	33	27
Proposed distance scale	135	116	103	86	70	59	47	54	41	34

In these specific rates the present Memphis to Huntsville rates are observed as maxima.

Respondents compare the proposed scale with many scales now applicable on southern lines. They show it to be less on all classes and for all distances than the present scale of the Mobile & Ohio applicable south of Cairo. They reinforce this showing by operating statistics to the effect that, although the train service of the N., C. & St. L. is 80.6 per cent of that of the Mobile & Ohio, its traffic density is materially lower. The proposed scale is also compared with the scales for distances up to 200 miles prescribed in *Meridian Traffic Bureau v. S. Ry. Co.*, *supra*, and with a number of interstate distance scales of various southeastern lines. It is substantially lower for the first 100 miles than that of the Illinois Central applicable in its Louisville, Paducah, and Fulton districts, and higher for distances over 100 miles. Respondents deduce from these comparisons that for the most part their proposed scale is lower than those in effect on strong southern lines under transportation conditions relatively more favorable than those on the N., C. & St. L. They instance the difficult transportation conditions encountered between Chattanooga and Nashville and recognized in *Nebraska Bridge Supply & Lumber Co. v. N., C. & St. L. Ry.* 35 I. C. C., 86, 88. We there said:

About 890 miles of defendant's road, more than three-fourths of defendant's total mileage, lie within the state of Tennessee. The main line crosses two ranges of mountains and the country traversed is generally rough and broken with heavy grades, sharp curves, and tunnels.

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The proposed scale is generally lower for distances between 300 and 450 miles than the maximum scale prescribed by us for application between intermediate points in *Fourth Section Violations in the Southeast*, 32 I. C. C., 61, plus the general increases. For distances over 450 miles it is higher.

The principal objection to this scale was made by the Tennessee Railroad and Public Utilities Commission, hereinafter referred to as the Tennessee commission. Its representative pointed out that Tennessee was peculiarly interested in the scale, as it would have application chiefly in that state. He admitted that the rates of the N., C. & St. L. north and west of Chattanooga and south and east of Nashville are chaotic, but said that west of Nashville the rate fabric is more consistent. The advantage of having one distance scale applicable between all stations on the N., C. & St. L. was conceded, but the Tennessee commission contends that the scale proposed would increase the carriers' revenues instead of merely conserving them, as it should. It shows that the N., C. & St. L. now maintains lower rates in Georgia than in Tennessee, and contends that the proposed increase in Tennessee, but not in Georgia, will result in unjust discrimination against Tennessee, as a burden will be placed on traffic within that state which should be evenly distributed over the entire system and in all states in which the road operates. To this respondents reply that if the proposed scale is approved they will petition the Railroad Commission of Georgia for permission to establish these rates in Georgia.

The Tennessee commission recommended a scale for distances up to 550 miles, constructed by fixing a rate of 36 cents for the first 10-mile block, which it claims will cover all terminal costs, and then grading this amount up 3 cents for each additional 10 miles. The first-class rates only are suggested. Under that scale the first-class rate for 150 miles would be 78 cents.

RATES TO LOCAL AND JUNCTION POINTS.

Material increases in rates are proposed in the suspended schedules to local and junction points on the lines of all respondents, including rates from Nashville to most of the six complainants in the *Murfreesboro Case*. Respondents support these proposals by the evidence considered in our earlier discussion of specific rates.

PERCENTAGE RELATIONSHIP OF CLASSES.

We have referred to the southern standard scale as formulated by officials of the United States Railroad Administration during the period of federal control. It is said to be the average of some

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17,000 class scales,¹ applicable on interstate and intrastate traffic throughout southern territory. In fixing the proposed rates below first class respondents followed for the most part the percentage relationship of classes in the southern standard scale. After adopting these figures and compiling the suspended tariffs they commenced a check of class rates throughout the southeast to ascertain whether the calculations of the Railroad Administration were correct, and to prove that the southern standard percentages were in fact an average of class percentages in the southeast. In doing this they averaged the percentage relationship of class rates from numerous southeastern cities to some 8,800 points. The average percentage relationship of the class rates so selected fairly approximates that of the southern standard scale. Such a test establishes nothing more than that the rates selected reflect the percentages of the southern standard, and is not sufficiently comprehensive to disclose whether its result is an average of the percentages of southern territory. There is no showing in the record of the transportation conditions affecting the traffic moving under the class rates considered by the Railroad Administration in its compilations. Nor does it appear that an average of all the percentage relationships that exist would be a reasonable and proper relationship. Such an average necessarily reflects to some extent every defect in the scales averaged.

It is pointed out that the southern standard percentages are approximately the same as those of the maximum scale prescribed in *Fourth Section Violations in the Southeast*, 32 I. C. C., 61.

Protestants contend that the percentages adopted by respondents are too high in the lettered classes, which are very important to the southeast, because much of the foodstuffs for both man and beast are moved thereon. They also contrast the southern standard percentages with the percentages reflected by the present Atlanta to Louisville rates, and with the percentages adopted in the recent Mississippi Valley readjustment made necessary by our decision in the *Memphis-Southwestern Investigation*.

In the numbered classes southern standard percentages are in substantial conformity with those of the present Atlanta to Louisville rates, but in the lettered classes the standard percentages are higher. The present Cincinnati to Atlanta rates have been relied upon by respondents as the pivotal rates of the entire southeastern readjustment, and a comparison of their percentages with the southern standard and with the percentage relationships of the new Mississippi Valley rates is more helpful. Such a comparison follows:

¹ By "class scale" is meant rates on all classes from a specific point to one destination, or for a certain distance.

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Classes-----	1	2	3	4	5	6	A	B	C	D
Cincinnati to Atlanta-----	100	86	76	64	52	43	29	35	27	24
Southern standard-----	100	86	76	64	52	44	35	40	30	25
Mississippi Valley readjustment-----	100	85	70	60	48	40	35	42	30	25

In so far as appears from this record the rates proposed by respondents have not been constructed in a logical manner. Their application would, indeed, remove the undue prejudice to the six complainants in the *Murfreesboro Case*, but it would bring about an even greater maladjustment in southern territory than now exists, and lead to widespread dissatisfaction and complaint. This is true not only because of the material increases proposed, but also because of the greater discriminations and new fourth section departures which would result. When such instances have been cited respondents have met them by forecasting additional changes carrying other increases in their train.

Respondents' witnesses testified that in making this revision they had to see to it that the changes would not diminish revenue, but that they did not seek to augment it. They assert that in all instances the rates proposed are not higher than is reasonable, and that at intermediate points the decreases are material. Thus, rates now in effect from southern Georgia points are to be considerably reduced so as not to exceed the rates proposed from south Atlantic ports to which they are intermediate. These existing rates are said by respondents to be not unreasonably high, and many of their rate comparisons are based upon them. But it is significant that they are relatively much higher than any rates proposed.

The plan of revision followed by respondents is in great part the cause of the inconsistencies and imperfections presented by these suspended schedules. In a territory where some substantial uniformity should prevail they seek to establish rates upon different bases and according to different standards of measurement. The proposed rates from the Ohio River have been constructed upon a "temporary" basis stated by respondents to be materially below what they intend ultimately to establish. The proposed rates from the southeast are raised to a level which attains the maximum height sought. The obvious result is maladjustment, even from respondents' own point of view.

The several fundamental principles adopted in working out this revision are commendable. The plan of equalizing rates in both directions is defensible. We have repeatedly said that where the transportation conditions affecting the movements in opposite directions between the same points are substantially similar there should be no material disparity in the rates. *West Virginia Rail Co. v. B. & O. R. R. Co.*, 50 I. C. C., 318. Thus, respondents state that they selected the present Cincinnati to Atlanta and Birmingham rates and in-

tend to establish northbound the same rates as now apply southbound. But instead of this they increase the northbound rates far in excess of the present southbound rates, and thus depart from their declared plan. Their only explanation is that southbound rates will be brought up ultimately to the northbound level. This, obviously, is a method of increasing present rates. It is stated that the increases presented in the proposed rates from Atlanta and Birmingham to Cincinnati over the present rates southbound are due to the use of the southern standard percentages. The plan to establish uniformity in percentage relationships is also not subject to criticism, if a proper relationship is adopted.

Respondents say that many of their proposals are temporary, pending the complete readjustment which the carriers intend to make of all rates in southern territory, thus bringing into harmony the rates here under consideration, Mississippi Valley rates, and others. Our present findings and order in these proceedings will be subject to such modification as may become desirable in aid of the contemplated general readjustment.

FINDINGS.

We find that respondents have not justified the proposed rates, except in certain particulars hereinafter specified. We further find that in order to remove the undue prejudice to the six complainants and the undue preference of Nashville as required in the *Murfreesboro Case*, and to establish just and reasonable rates from and to other points covered by the suspended schedules, respondents should establish rates applicable to interstate traffic constructed in accordance with the bases shown below which we find will be just and reasonable maximum rates, viz:

	Distance.	First-class rate.
	Miles.	Cents.
Cincinnati, Ohio, to Nashville, Tenn., and between.....	296	115
Evansville, Ind., to Nashville, Tenn., and between ¹	158	94
Henderson, Ky., to Nashville, Tenn., and between ²	146	90
Memphis, Tenn., to Nashville, Tenn., and between.....	230	110
Mobile, Ala., to Nashville, Tenn. ³	473	160
Atlanta, Ga., to Cincinnati, Ohio ⁴	474	160
Birmingham, Ala., to Henderson, Ky. ⁵	354	145
Atlanta, Ga., to Nashville, Tenn.....	287	115
Birmingham, Ala., to Nashville, Tenn.....	208	110
Atlanta, Ga., to Memphis, Tenn.....	418	150
Birmingham, Ala., to Memphis, Tenn.....	251	112
Chattanooga, Tenn., to Nashville, Tenn., and between.....	151	90
Atlanta, Ga., to St. Louis, Mo.....	612	195
Birmingham, Ala., to St. Louis, Mo.....	496	180

¹To be applied also from other lower north-bank Ohio River crossings, namely, Jeffersonville and Evansville, Ind., and Cairo, Ill.

²To be applied also from other lower south-bank Ohio River crossings, namely, Louisville, Owensboro, Henderson, and Paducah, Ky.

³To be applied also from New Orleans, La., and Pensacola, Fla.

⁴To be applied also from Atlanta to all lower Ohio River crossings and from Birmingham to Cincinnati.

⁵To be applied also to all other lower Ohio River crossings.

Rates from and to, or between, other points in this same general territory to be constructed in relation to the foregoing, using distance as a guide:

Rates between St. Louis and Nashville, 35 cents on first class higher than rates between Nashville and lower north-bank Ohio River crossings;

Rates from Macon, Ga., to Nashville, the Ohio River crossings, Memphis, and St. Louis, 15 cents on first class higher than the rates from Atlanta to those points, respectively;

Rates from Augusta, Ga., to Nashville, the Ohio River crossings, Memphis, and St. Louis, 28 cents on first class higher than the rates from Atlanta to those points, respectively;

Rates from Columbus, Ga., to Nashville, Ohio River crossings, Memphis, and St. Louis, 20 cents on first class higher than the rates from Atlanta to those points, respectively;

Rates from Tuscaloosa, Ala., to Nashville, the Ohio River crossings, Memphis, and St. Louis, 12 cents on first class higher than rates from Birmingham to those points, respectively;

Rates from Montgomery and Selma, Ala., to Nashville, the Ohio River crossings, Memphis, and St. Louis, 15 cents on first class higher than the rates from Birmingham to those points, respectively;

Rates from Savannah and Brunswick, Ga., Charleston, S. C., and Jacksonville, Fla., to Nashville, the Ohio River crossings, Memphis, and St. Louis, 20 cents on first class higher than rates from Augusta to those points, respectively; and

Rates on first class from eastern and Virginia cities to Nashville not in excess of those proposed by respondents and under suspension herein, which we find to have been justified.

Rates to the points represented by complainants in the *Murfreesboro Case* to which traffic moves through Nashville should not exceed the rates herein prescribed to Nashville by more than 75 per cent of the present local rates from Nashville to those points.

The lower classes of all revised rates should be constructed in conformity with the following percentages of first class:

Classes	1	2	3	4	5	6	A	B	C	D
Percentages	100	86	76	64	52	43	29	35	27	24

In computing and applying the rates prescribed herein fractions of less than 0.25 cent will be omitted. Fractions of 0.25 cent or greater but less than 0.75 cent will be stated as 0.5 cent. Fractions of 0.75 cent or greater will be increased to the next whole cent.

In constructing rates in conformity with the foregoing the rate bases prescribed above must be observed as maxima from, to, and between intermediate points in accordance with the provisions of the fourth section of the act. Rates to or from such intermediate points
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should be graded with relation to the rates here prescribed, giving due consideration to distance.

Pending our decision in *Corporation Commission of N. C. v. Director General, supra*, reopened for further consideration, no changes in present rates from Carolina territory should be made.

These findings are without prejudice to any different conclusions which may be reached in other proceedings now pending involving the rates to, from, or within the territory considered herein.

An appropriate order will be entered requiring the cancellation of the suspended schedules, and the filing of new schedules establishing rates on the bases herein prescribed.

COMMISSIONER ESCH did not participate in the disposition of this case.

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APPENDIX.

Proposed scale of Nashville, Chattanooga & St. Louis Railway.

[Rates are stated in cents per 100 pounds.]

Distances.	Class rates.									
	1	2	3	4	5	6	A	B	C	D
5 miles and less	31	37	34	30	16	14	11	13	9	8
10 miles and over 5	36	31	27	23	19	16	13	14	11	9
15 miles and over 10	41	35	31	26	21	18	14	16	13	10
20 miles and over 15	46	40	35	29	24	20	16	18	14	12
25 miles and over 20	50	43	38	32	26	22	18	20	15	13
30 miles and over 25	54	46	41	35	28	24	19	22	16	14
35 miles and over 30	58	50	44	37	30	26	20	23	17	15
40 miles and over 35	61	52	46	39	32	27	21	24	18	15
45 miles and over 40	65	55	49	42	34	29	23	26	20	16
50 miles and over 45	69	59	52	44	36	30	24	28	21	17
55 miles and over 50	71	61	54	45	37	31	25	28	21	18
60 miles and over 55	74	64	56	47	38	32	26	30	23	19
65 miles and over 60	76	65	58	49	40	33	27	30	23	19
70 miles and over 65	79	68	60	51	41	35	28	32	24	20
75 miles and over 70	81	70	62	53	42	36	28	32	24	20
80 miles and over 75	84	72	64	54	44	37	29	34	25	21
85 miles and over 80	86	74	65	55	45	38	30	34	26	22
90 miles and over 85	89	77	68	57	46	39	31	36	27	23
95 miles and over 90	91	78	69	58	47	40	32	36	27	23
100 miles and over 95	94	81	71	60	49	41	33	38	28	24
110 miles and over 100	96	84	74	63	51	43	34	39	29	25
120 miles and over 110	101	87	77	65	53	44	35	40	30	25
130 miles and over 120	105	90	80	67	55	46	37	42	32	26
140 miles and over 130	109	94	83	70	57	48	38	44	33	27
150 miles and over 140	113	97	86	72	59	50	40	45	34	28
160 miles and over 150	115	99	87	74	60	51	40	46	35	29
170 miles and over 160	118	101	90	76	61	52	41	47	35	30
180 miles and over 170	120	103	91	77	62	53	42	48	36	30
190 miles and over 180	123	106	93	79	64	54	43	49	37	31
200 miles and over 190	125	108	95	80	65	55	44	50	38	31
210 miles and over 200	128	110	97	82	67	56	45	51	39	32
220 miles and over 210	130	112	99	83	68	57	46	52	39	32
230 miles and over 220	133	114	101	85	69	59	47	53	40	33
240 miles and over 230	135	116	103	86	70	59	47	54	41	34
250 miles and over 240	138	119	105	88	72	61	48	55	41	35
260 miles and over 250	140	120	106	90	73	62	49	56	42	35
270 miles and over 260	143	123	109	92	74	63	50	57	43	36
280 miles and over 270	145	125	110	93	75	64	51	58	44	36
290 miles and over 280	148	127	112	95	77	65	52	59	44	37
300 miles and over 290	150	129	114	96	78	66	53	60	45	38
315 miles and over 300	153	132	116	98	80	67	54	61	46	38
330 miles and over 315	155	133	118	99	81	68	54	62	47	39
345 miles and over 330	158	136	120	101	83	70	55	63	47	40
360 miles and over 345	160	138	122	102	83	70	56	64	48	40
375 miles and over 360	163	140	124	104	85	72	57	65	49	41
390 miles and over 375	166	142	125	106	86	73	58	66	50	41
405 miles and over 390	168	144	126	107	87	74	59	67	50	42
420 miles and over 405	170	146	128	108	88	75	60	68	51	43
435 miles and over 420	173	149	131	111	90	76	61	69	52	43
450 miles and over 435	175	151	133	112	91	77	61	70	53	44
470 miles and over 450	178	153	135	114	93	78	62	71	53	45
490 miles and over 470	180	155	137	115	94	79	63	72	54	45
510 miles and over 490	183	157	139	117	95	81	64	73	55	46
530 miles and over 510	185	159	141	118	96	81	65	74	56	46
550 miles and over 530	188	162	143	120	98	83	66	75	56	47

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No. 10549.
AYRES, BRIDGES & COMPANY
v.
DIRECTOR GENERAL, AS AGENT, ERIE RAILROAD
COMPANY, ET AL.

Submitted February 1, 1921. Decided April 5, 1921.

Refund of overcharge heretofore found on shipment of camels' manes from Vancouver, British Columbia, to New York, N. Y., ordered paid to interveners. Original report in 58 I. C. C., 748.

Allan R. Brown and G. F. Snyder for complainants.

Rufus W. Sprague, jr., for interveners.

John F. Finerty for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

In our original report in this proceeding, 58 I. C. C., 748, we found that the import rate on wool in the grease was applicable to import shipment of camels' manes from Vancouver, British Columbia, to New York, N. Y., that that rate was not unreasonable, and that the freight charges collected included an overcharge of \$3,951.23. At page 750 of the report we stated:

Complainants purchased the shipment delivered at New York, and the rail transportation charges paid by them were deducted in their settlement with the vendor. Complainants introduced a writing purporting to be a transfer to them of the vendor's rights in the claim for reparation, signed by a bank in this country for and in the name of the vendor. The authority of the bank in the premises is not established. No order for reparation will be entered, but defendants should promptly refund the overcharge, with interest, to the party or parties lawfully entitled thereto.

The complaint was dismissed.

Defendants alleged that they were unable to determine the party lawfully entitled to the refund, and refused to make refund until we issued an order designating the party lawfully entitled thereto. Upon petition filed by complainants December 7, 1920, further hearing on that question was ordered and has been had. Elias Trilling and Sam Trilling, copartners trading as Elias Trilling & Son, at Moscow, Russia, the vendors, intervened.

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Complainants concede that they did not bear the freight charges, that they are not entitled to reparation, and that refund of the overcharges should be made to interveners herein who have reimbursed complainants for the freight charges.

We find that interveners are lawfully entitled to refund of the overcharge. An order awarding reparation in the sum of \$3,951.23, with interest, will be entered.

COMMISSIONER ESCH did not participate in the disposition of this case.

61 I. C. C.

No. 11382.
AMERICAN MANUFACTURING COMPANY
v.
MISSOURI PACIFIC RAILROAD COMPANY.

Submitted January 5, 1921. Decided March 26, 1921.

Tariff rule of defendant resulting in the application of domestic rate on sisal, in carloads, imported from Mexico found unreasonable. Reparation awarded.

J. A. Hoffman, T. F. Magner, Francis B. James, E. E. Williamson, and Ewing H. Scott for complainant.

No appearance for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing cordage at St. Louis, Mo. By complaint seasonably filed it alleges that the application of a domestic rate of 21 cents per 100 pounds by reason of a tariff rule restricting the application of the contemporaneous import rate of 17 cents to traffic stored at the port in the possession of inland carriers or from appraisers' stores resulted in unreasonable charges on 41 carloads of imported sisal shipped from a privately owned public warehouse at New Orleans, La., to St. Louis. We are asked to award reparation only. Rates will be stated in cents per 100 pounds.

In April and May, 1916, complainant received at New Orleans by vessel a consignment of sisal which originated in Mexico. The sisal was stored in a privately owned public warehouse adjacent to railroad tracks. In November, 1916, it was shipped to St. Louis over the lines of defendant's predecessor Missouri Pacific Railway. Charges were originally collected at the import rate of 17 cents. The tariff naming the import rates in so far as the Missouri Pacific was concerned provided that the rate would apply on imported shipments stored at the port in the possession of inland carriers or from appraisers' stores. As the shipments had been stored in a privately owned warehouse, additional charges were subsequently collected by defendant at the contemporaneous domestic rate of 21 cents. On

April 1, 1918, the import rate was made applicable on shipments stored in privately owned warehouses on railroad tracks.

When the consignment arrived in New Orleans storage was not available in the railroad warehouses and not permissible in the appraisers' stores, so that complainant was compelled to store the sisal in a privately owned warehouse.

We find that application of the tariff provision to these shipments resulted in charges thereon which were unreasonable to the extent that they exceeded those which would have accrued at the contemporaneous import rate of 17 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 11432.

GEORGE A. FULLER COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted December 23, 1920. Decided March 26, 1921.

Rate on boat rudders, in car lots, from Wheeling, W. Va., to Wilmington, N. C.,
found unreasonable. Reparation awarded.

N. S. Haskett for complainant.

John F. Finerty, J. C. Brooke, Henry Thurtell, and Frank W. Gwathmey for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation engaged in building steel ships at Wilmington, N. C., is successor in interest to the Carolina Ship-building Corporation. By complaint seasonably filed it alleges that the third-class rate assessed on four car lots of boat rudders shipped between January 4 and November 21, 1919, inclusive, from Wheeling, W. Va., to Wilmington was unjust and unreasonable. Reparation only is asked. Rates will be stated in cents per 100 pounds, and are those in effect prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The average weight of the four shipments was 70,594 pounds. Each consisted of two rudders with steering frames, was valued at approximately \$10,240, and was loaded by the shipper and unloaded by the consignee. They moved over the Baltimore & Ohio, or the Pittsburgh, Cincinnati, Chicago & St. Louis and the Pennsylvania, to Potomac Transfer, Va.; and thence Southern to Quantico, Va.; Richmond, Fredericksburg & Potomac to Richmond, Va.; and Seaboard Air Line or Atlantic Coast Line to destination.

The third-class rate of 81.5 cents applicable on "Boat parts: Rudders in boxes, bundles or crates," was charged. Prior to these shipments there had been no movement of cast-steel rudders in car lots between these points or between points in southern classification territory, inasmuch as prior to the European war there had been no shipyard in that territory building vessels requiring this class of
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rudder. Immediately after the first shipment a reduction in the rating was requested and on December 30, 1919, the following ratings were established:

Boat parts: Rudders:		Class.
In boxes, bundles or crates, L. O. L.		3
Loose, or in packages, C. L. min. wt. 30,000 lbs.		5

This carload rating was suggested in Appendix No. 6, *Consolidated Classification Case*, 54 I. C. C., 1, 150. The fifth-class rate to the basis of which reparation is asked was 50 cents.

The distances over the routes of movement ranged from 713 to 834 miles. The earnings at the rate charged were from 19.5 to 22.9 mills per ton-mile, and, based upon the average weight, 69 to 80.7 cents per car-mile; the rate sought would have yielded 12 to 14 mills and 42.3 to 49.5 cents, respectively. Complainant cited ton-mile earnings of from 10.1 to 14.6 mills on similar shipments of rudders from Chicago, Ill., Columbus, Ohio, Erie and Pittsburgh, Pa., to Baltimore, Md., Hog Island, Pa., and New York, N. Y., 328 to 817 miles; of 15.8 mills on shipments from Chester, Pa., to Newport News, Va., 240 miles; and of 9.9 and 10.7 mills from Wheeling to Newark, N. J., 545 and 506 miles, according to the route of movement.

The Carolina Shipbuilding Corporation, as superintendent for the United States Shipping Board, Emergency Fleet Corporation, contracted to operate under the so-called cost-plus plan, under which it would have been reimbursed by the government for the cost of building ships, and in addition thereto would have received a certain percentage of the cost as profit. Before any ships had been delivered, however, a new contract was executed. On January 1, 1920, complainant took over the business, and all rights and liabilities arising from the previous operation of the shipyard were transferred to it by the Carolina Shipbuilding Corporation and by the Emergency Fleet Corporation. Under the new contract complainant sold the ships outright to the government.

We find that the rate charged was unreasonable to the extent that it exceeded 50 cents; that the shipments were made as described; that the Carolina Shipbuilding Corporation paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that complainant, as successor in interest to the Carolina Shipbuilding Corporation, is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 11492.

DAVIS MANUFACTURING COMPANY, INCORPORATED,
v.
DIRECTOR GENERAL, AS AGENT, MORGAN'S LOUISIANA
& TEXAS RAILROAD & STEAMSHIP COMPANY, ET AL.

Submitted November 1, 1920. Decided March 3, 1921.

Rate on sulphur, in carloads, from Sulphur Mines, La., to Knoxville, Tenn., via Memphis, Tenn., found not unjustly discriminatory or unduly prejudicial, but via New Orleans, La., found unduly prejudicial. Undue prejudice ordered removed.

Daniel J. Kelly for complainant.

J. R. Bell for Kansas City Southern Railway Company, Brimstone Railroad & Canal Company, Missouri Pacific Railroad Company, and Director General, as Agent; *C. B. Northrop* for Director General, as Agent, Southern Railway Company, New Orleans & Northeastern Railroad Company, Alabama Great Southern Railroad Company, and Louisville & Nashville Railroad Company; and *Joseph Lallande* for Morgan's Louisiana & Texas Railroad & Steamship Company and Louisiana Western Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing druggists' sundries at Knoxville, Tenn., by complaint seasonably filed, as amended, attacks the rate on sulphur in carloads from Sulphur Mines, La., to Knoxville as unjustly discriminatory and unduly prejudicial. We are asked to award reparation on three carloads which moved during July and August, 1919, and March, 1920, and to establish a rate of 31.5 cents for the future. Rates are stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C. 220.

The sulphur under consideration is ground in transit. Its value ground is \$25 a ton and complainant handles about 100 tons a year. It is received in 100-pound bags and, except for a small quantity used in other preparations, is repacked by complainant in small packages of 6 ounces or more and distributed among wholesale

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grocers. It is used for medical, antiseptic, spraying, and other purposes, and is sold in competition with the product of manufacturers at Nashville and Chattanooga, Tenn., Louisville and Lexington, Ky., and Cincinnati, Ohio.

The shipments moved over the lines of the Brimstone Railroad & Canal Company to Mossville, La., Kansas City Southern to Lake Charles, La., where it was ground in transit, and thence to Texarkana, Tex., Missouri Pacific to Memphis, Tenn., Nashville, Chattanooga & St. Louis to Chattanooga, and Southern to destination. Charges thereon were collected at the applicable commodity rate of 40.5 cents. No evidence was submitted by complainant with reference to the rate via the route of movement, its allegation of undue preference being based on the rates applicable via New Orleans, over which route the 40.5-cent rate also applied to Knoxville from Sulphur Mines. This rate is compared with commodity rates of 31.5 and 30.5 cents to Nashville and Chattanooga, respectively, via New Orleans for shorter hauls in which the Kansas City Southern does not participate.

The 40.5-cent rate via the Kansas City Southern to Knoxville is lower, distance considered, than the rates via that line to other points on and east of the Mississippi River and south of the Kentucky-Virginia state line to which specific commodity rates are published.

The rates to Chattanooga and Nashville are 7 and 4 cents, respectively, lower over the short lines than the rates published by the Kansas City Southern, which carrier states that it has never attempted to meet those rates because it deemed them too low and that the business would not be attractive on that basis. If the Kansas City Southern should establish the 31.5-cent rate to Knoxville, asked for by complainant, its rates to Nashville and Chattanooga, if not reduced, would contravene the long-and-short-haul provision of the fourth section. The New Orleans combination to Chattanooga is 34.5 cents, and if this were established by the Kansas City Southern as its rate to Chattanooga, the 35.5-cent rate to Nashville would likewise be a departure from the fourth section.

We find that the rate on the traffic involved from Sulphur Mines via Memphis to Knoxville was not and is not unjustly discriminatory or unduly prejudicial as compared with the rates to Nashville and Chattanooga via the same route, but that the adjustment between the rates to Knoxville on the one hand and to Nashville and Chattanooga on the other via New Orleans is unduly prejudicial to Knoxville and unduly preferential of Chattanooga and Nashville. As these rates are undergoing readjustment, no order will be entered for the present but defendants will be expected to realign them so as to remove the undue prejudice found to exist within 90 days from the date of service of this report.

HALL, *Commissioner*, dissenting in part:

I concur in the finding that the rate via Memphis was not and is not unjustly discriminatory or unduly prejudicial, but not in the finding that the rate via New Orleans is unduly prejudicial. That issue is nowhere presented; and I see no occasion to open the door for increase over that route of rates to Nashville and Chattanooga.

No. 11551.

GATEWAY PRODUCE COMPANY, INCORPORATED,
v.
AMERICAN RAILWAY EXPRESS COMPANY AND
DIRECTOR GENERAL, AS AGENT.

Submitted January 26, 1921. Decided April 2, 1921.

Rate applicable on two carloads of cantaloupes shipped July 30, 1918, by express from Horatio, Ark., to New Orleans, La., found unreasonable. Unpublished icing charge assessed found to have been excessive. Reparation awarded.

R. A. Koontz and J. A. Robison for complainant.

T. B. Harrison, A. M. Hartung, and James M. Crawford for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

BY DIVISION 2:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the produce business at Texarkana, Ark., alleges, by complaint seasonably filed, that the rate charged by defendants on two carloads of cantaloupes, in crates, shipped July 30, 1918, by express from Horatio, Ark., to New Orleans, La., was illegal and that the rate legally applicable was unreasonable. We are asked to award reparation and to prescribe a reasonable rate for the future. Rates are stated in amounts per 100 pounds.

Horatio is a local station on the Kansas City Southern Railroad, 47 miles north of Texarkana. The shipments aggregated 48,570 pounds, and charges in the sum of \$1,105.79, which included an unpublished icing charge of \$50 per car were collected. The second-class rate of \$2.0625 was applicable, and there is an apparent overcharge of \$4.03 in the express charges.

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Complainant compares the rate applicable and the icing charge assessed, with the following carload commodity rates and refrigeration charges contemporaneously maintained by defendants from Horatio to more distant points:

	Distances.	Rates.	Refrigeration charges per car.
	Miles.		
From Horatio to—			
New Orleans, La.....	427	\$2.0825	\$50.00
Kansas City, Mo.....	441	.06	25.00
St. Louis, Mo.....	541	.06	25.00
Chicago, Ill.....	825	.06	44.00
Cleveland, Ohio.....	1,077	1.37	55.00
Pittsburgh, Pa.....	1,158	1.37	55.00

¹ Estimated cost of ice.

At the time of movement the freight rate on cantaloupes, carloads, from Horatio to New Orleans was 11.5 cents less than the corresponding rates to Kansas City and St. Louis. On March 20, 1919, in connection with a general revision of their commodity rates in the southwest, defendants established an any-quantity rate of \$1.47 on cantaloupes from Horatio to New Orleans, and effective December 31, 1919, a carload commodity rate of \$1.14, plus \$33 per car for refrigeration, was provided.

It appears that the rates with which comparison is made in the foregoing statement were established approximately 18 years ago upon the solicitation of the Kansas City Southern Railroad for the purpose of promoting the production of vegetables, fruits, and melons along that line; that they are now, and at all times since their publication have been, unduly low; that the carload commodity rate of \$1.14 was established to New Orleans upon complainant's representation that it had secured control of a large crop of cantaloupes and would move a considerable quantity by express to that market; and that in spite of the materially reduced any-quantity and carload commodity rates available to complainant since March 20, 1919, and December 31, 1919, respectively, the two carloads on which reparation is sought represent the only express movement of cantaloupes from Horatio to New Orleans out of 139 carloads shipped by express from that point during the seasons of 1918, 1919, and 1920. It is asserted for complainant that the light movement by express to New Orleans is due to the unreasonableness of the express rates and to the consequent necessity of shipping by freight.

Defendants' tariffs contained no provision for the icing charges collected. In *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90, we held that where a transportation service has been rendered

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for which no tariff authority existed and where the shipper has paid the sum demanded by the carrier for that service, we may determine what would have been a reasonable charge and order repayment of the excess, if any. The contemporaneous maintenance of the lower refrigeration charges shown in the foregoing table, on shipments to Kansas City, St. Louis, and Chicago, for distances 14, 114, and 398 miles, respectively, greater than the distance to New Orleans, together with the subsequent establishment of a refrigeration charge of \$33 per car on shipments to New Orleans, indicate that the charge of \$50 assessed was excessive. There is no evidence of special conditions which might have justified on these particular shipments an icing charge in excess of \$33.

One of the shipments was refused at destination and sold for charges. On the other shipment the charges were paid by the consignee, who deducted from complainant's invoice the difference between the sum paid and the amount which would have accrued had the shipments moved by freight.

We find that the rate applicable was unreasonable to the extent that it exceeded \$1.47 per 100 pounds; that the refrigeration charges collected were unreasonable to the extent that they exceeded \$33 per car; that the shipments moved as described; that complainant paid and bore the charges thereon to the extent stated herein; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate and refrigeration charge found to have been reasonable; and that it is entitled to reparation in the sum of \$325.81, which includes the overcharge, with interest.

We do not find that the present carload rate is unreasonable.

An appropriate order will be entered.

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No. 11223.¹

HIRTH-KRAUSE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, ET AL.

Submitted October 30, 1920. Decided March 3, 1921.

1. Rates on green salted hides, in carloads, from Chicago, Ill., Racine and Milwaukee, Wis., to Rockford, Mich., found unreasonable and unduly prejudicial. Reparation awarded and measure of reasonable maximum and nonprejudicial rates prescribed.
2. Fourth section relief denied.

S. J. Bolton and Brown & Boyle for complainant.

William K. Williams and John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner and the case was argued before us.

Complainant is a corporation engaged in tanning hides and manufacturing shoes at Rockford, Mich. It alleges that the fifth-class rates charged by defendants on green salted hides, in carloads, from Chicago, Ill., and Racine and Milwaukee, Wis., to Rockford were and are unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the act to regulate commerce. Reparation is asked in No. 11223, filed February 9, 1920, on all shipments made on and after February 10, 1918, and in Sub-No. 1, filed March 29, 1920, on all shipments made between April 1, 1916, and December 31, 1917, inclusive. Defendants interposed the statute of limitations as a bar to relief of complainant in Sub-No. 1.

Section 206 (f) of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the periods of limitation in claims for reparation to the Commission for causes of action arising prior to federal control. The claims made in Sub-No. 1 are therefore not barred. Rates will be stated in cents

¹ The report embraces also No. 11223 (Sub-No. 1), *Same v. Chicago, Milwaukee & St. Paul Railway Company et al.*; and Portions of Fourth Section Application No. 2080.

per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Rockford is on the Grand Rapids & Indiana, 14 miles north of Grand Rapids, Mich. Complainant uses large quantities of green salted horse hides in manufacturing leather and shoes. The hides are shipped from Chicago, Racine, and Milwaukee and move either all rail, or by car ferry across Lake Michigan and rail beyond. The principal movement in the past appears to have been from Milwaukee by car ferry to Grand Haven, Mich., and thence by rail to Rockford, an aggregate of 132 miles, which is the short-line distance. Of the 83 shipments upon which reparation is asked 71 moved over this route. The weighted average haul of the 83 shipments was 146 miles.

Fifth-class rates governed by the official classification were and are applicable. Complainant attacks neither the classification rating nor the measure of the fifth-class rates as such, but seeks the establishment of commodity rates on the ground that application of the class basis to green salted hides from and to these points is unreasonable.

The subjoined statement introduced in evidence by complainant shows the fifth-class rates in effect during the periods covered by the complaints, together with the short-line distances, across lake and all rail:

	Short-line distances.		Fifth-class rates.		
	Across lake.	All-rail.	Prior to Sept. 20, 1917.	Sept. 20, 1917, to June 24, 1918, inclusive. ¹	Effective June 25, 1918. ²
To Rockford from—	Miles.	Miles.	Cents.	Cents.	Cents.
Chicago, Ill.....		191	14.7	17	21.5
Racine, Wis.....	154	253	14.7	17	21.5
Milwaukee, Wis.....	131	276	12.6	15	19

¹Increase following *The Fifteen Per Cent Case*, 45 I. C. C., 303.

²Increase under general order No. 28 of the Director General of Railroads.

³All-rail via Chicago 19 cents.

⁴All-rail via Chicago 24 cents.

⁵All-rail via Chicago 14.7 cents.

Complainant shows that commodity rates lower than fifth class have been in effect during the periods indicated above from Chicago, Racine, and Milwaukee to numerous points in Michigan where tanneries are located. These rates do not appear to be constructed upon any well-defined basis, but range from 49 to 91 per cent of the corresponding fifth-class rates. As Chicago and Milwaukee are important markets for hides, and Michigan is one of the principal leather-

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producing states, there is a substantial movement under these rates. Complainant asserts that Rockford is the only tannery point in Michigan to which commodity rates lower than fifth class are not published. It introduced exhibits showing that a 14-cent rate was applied by the Michigan carriers to tanning points north, south, and east of Rockford for distances sometimes materially in excess of that to Rockford, the direct route being in many instances over two or more lines. Distances over which this rate applies vary widely owing to the fact that the carriers in most cases have equalized the rates from Milwaukee and Racine across lake and all rail. The average distance over which the 14-cent rate applies is stated by complainant to be 232 miles, and the average ton-mile earnings 12.07 mills.

The following table, taken from complainant's exhibits, shows the rates, distances, and ton-mile earnings from Milwaukee, Racine, and Chicago to Rockford and competitive destinations in Michigan:

	From Chicago.			From Racine.			From Milwaukee.		
	Short-line distances.	Rates.	Ton-mile earnings.	Short-line distances.	Rates.	Ton-mile earnings.	Short-line distances.	Rates.	Ton-mile earnings.
All rail to—	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Rockford, Mich.....	191	21.5	22.51	253	24	18.97	276	24	17.30
Grand Rapids, Mich.....	177	14	15.82	230	14	11.72	262	14	10.69
Mill Creek, Mich.....	183	14	15.30	245	17	13.88	268	17	12.69
Muskegon, Mich.....	187	14	14.97	249	17	13.66	272	17	12.50
Manistee, Mich.....	291	18	12.37	353	14	7.93	376	14	7.45
Whitehall, Mich.....	200	14	14	262	17	12.98	285	17	11.98
Across lake to—									
Rockford, Mich.....				154	21.5	27.92	132	19	20
Grand Rapids, Mich.....				140	14	20	117	14	23.98
Mill Creek, Mich.....				146	17	23.29	123	17	27.64
Muskegon, Mich.....				124	17	27.42	101	14	27.72
Manistee, Mich.....				106	14	16.87	143	14	19.58
Whitehall, Mich.....				136	17	25	113	17	30.09

¹ Fifth-class rate effective June 25, 1918.

Using these short-line distances and rates, and an estimated weight per car of 63,000 pounds, the car-mile earnings to Rockford are approximately 71 cents from Chicago, 88 cents from Racine, and 91 cents from Milwaukee. A 14-cent rate from Milwaukee over the short-line route would yield ton-mile earnings of 21.2 mills and for the weighted average distance of these movements, 19.2 mills. The yield per car-mile would be 66.8 and 60.4 cents, respectively.

Complainant introduced in evidence numerous other comparisons of the ton-mile yield of the rates in issue and those produced by other rates in effect subsequent to June 24, 1918, of which the following are representative:

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From—	To—	Dis- tances.	Rates.	Ton- mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Chicago, Ill.....	Berlin, Wis.....	181	12.5	13.81
Green Bay, Wis.....	Chicago, Ill.....	189	14	14.97
Joliet, Ill.....	Mill Creek, Mich.....	206	14	13.89
St. Louis, Mo.....	Muskegon, Mich.....	470	21.5	9.15
Hannibal, Mo.....	Indianapolis, Ind.....	288	18	12.08
Springfield, Ill.....	Cincinnati, Ohio.....	822	18	11.18
Hutchinson, Kans.....	Kansas City, Mo.....	214	15	14
Enid, Okla.....	do.....	331	21.5	12.08
Louisville, Ky.....	Nashville, Tenn.....	186	17.5	15.22
Do.....	Jellico, Tenn.....	201	17.5	17.41

Defendants urge, as to the comparisons in western classification territory, that generally commodity rates lower than the class basis are published on packing-house products in that territory, and that such rates are ordinarily applied on green salted hides. They assert, moreover, that the rates in official and western classification territories are not fairly comparable. It is well known that rates in central territory are usually lower than those either in western or southern classification territories.

Defendants state that the basis for rates on packing-house products in official classification territory is fifth class, and that green salted hides move under fifth-class rates from Chicago, Racine, and Milwaukee to points in trunk line territory. They urge that the commodity rates on green salted hides to points in western Michigan apparently are made without any fixed relationship to one another, to the class rates, or to the distances. They offered no comparisons in support of the rates assailed, conceded that they were relatively unreasonable, but denied that they were unreasonable *per se*.

Complainant has competitors engaged in tanning hides for shoe leather at Grand Rapids and at various other Michigan points to which commodity rates are published on green salted hides from Chicago, Racine, and Milwaukee. It is said that the rates on other commodities are generally the same to Rockford as to Grand Rapids. Class rates from Milwaukee are the same across lake to Rockford and Grand Rapids, but all rail the fifth-class rate to Grand Rapids is 1 cent under Rockford. The fifth-class rate from Chicago is the same across lake to Rockford and Grand Rapids. To Grand Rapids all rail it is 1 cent under Rockford over the Michigan Central and 0.5 cent under Rockford over the Grand Trunk.

Complainant seeks the establishment of a commodity rate of 14 cents from the three points of origin named to Rockford and prays that reparation be awarded to that basis on shipments moving after June 24, 1918; that a rate of 11 cents, which represents what an existing 14-cent rate would have been prior to general order No. 28, be used as the basis for awarding reparation during the period Sep-
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tember 20, 1917, to June 24, 1918, inclusive; and that a rate of 9.5 cents, which represents what a rate of 11 cents prior to June 25, 1918, would have been before the application of the advance authorized in *The Fifteen Per Cent Case*, 45 I. C. C., 308, be used as the basis for awarding reparation for the period prior to September 20, 1917.

The foregoing comparative table of rates from Milwaukee, Racine, and Chicago shows that to Mill Creek, Mich., a local tanning point on the Grand Rapids & Indiana, 8 miles from Rockford and intermediate thereto by the direct lines, the rate from Milwaukee and Racine is 17 cents, which is 3 cents over the rate to Grand Rapids, whereas from Chicago the rates to Grand Rapids and Mill Creek are the same. It was explained for complainant that the hides shipped to Mill Creek were principally cattle hides from Chicago, and that no appreciable amount of traffic moved to that destination from Milwaukee; whereas complainant uses horse hides only and obtains its principal supply in Milwaukee. No convincing reason has been given why rates in the past to Rockford should have been or be upon a higher level than those to the large number of more distant Michigan tanning points taking the Grand Rapids rate.

We find that the rates assailed were unreasonable and unduly prejudicial to the extent that they exceeded 14 cents and that the present rates are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceed the rates contemporaneously applicable to Grand Rapids, Mich. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

Those portions of fourth section application No. 2060 of agent J. F. Tucker, by which authority is sought to continue lower rates on green salted hides, in carloads, from Milwaukee to Rockford and Mill Creek than from Chicago and other intermediate points, were heard with this case. This departure from the long-and-short-haul provision of the fourth section has been removed, and the application will be denied to the extent involved.

Appropriate orders will be entered.

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No. 10976.

NORTH VERNON LUMBER COMPANY ET AL.

v.

ILLINOIS CENTRAL RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL

Submitted November 18, 1920. Decided March 3, 1921.

Rates on hardwood logs, in carloads, from stations on the Yazoo & Mississippi Valley Railroad in Mississippi to Dyersburg and Trimble, Tenn., on the Illinois Central Railroad, the application of which is conditioned upon the manufactured product being shipped out over the latter line, found unreasonable, and a scale of reasonable maximum rates prescribed for the future.

J. V. Norman, C. A. New, and J. H. Townshend for complainants and interveners.

R. V. Fletcher for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainants, North Vernon Lumber Company and James E. Stark & Company, are corporations operating sawmills at Dyersburg, Tenn. By complaint filed October 23, 1919, they allege that the combination rates on hardwood logs, in carloads, from stations on the Yazoo & Mississippi Valley in Mississippi to Dyersburg, composed of so-called billing rates to Memphis and the net or reshipping rates of the Illinois Central beyond, are unreasonable to the extent that they exceed the scales of net or reshipping rates on logs applicable locally between points on each of the above-mentioned lines. The Leigh Banana Case Company, a corporation operating a sawmill at Trimble, Tenn., intervened. It alleges that its interests in this proceeding are identical with those of complainants, except that its mill is located at Trimble instead of Dyersburg, and it will be hereinafter treated as a complainant. Rates will be stated in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C. 220.

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Dyersburg is on the Illinois Central 76 miles north of Memphis, and Trimble is 16 miles north of Dyersburg on the same line. Complainants manufacture lumber at Dyersburg and banana-crate material at Trimble, which are shipped over the Illinois Central to consuming points in the north or elsewhere. They have so far exhausted the local supply of logs that, in order to continue the operation of their mills, they desire to obtain logs from the extensive hardwood forests of western Mississippi, north of Jackson and Vicksburg, Miss., in territory served by the Yazoo & Mississippi Valley, hereinafter termed the Y. & M. V. The distances from Y. & M. V. points in this territory to Dyersburg and Trimble range from 83 to 312 miles, and the average haul during a six months' period was 210 miles.

For many years the Illinois Central and Y. & M. V. have maintained separate distance scales of local rates, sometimes called flat rates, on logs between stations on their respective lines. In 1899 the Y. & M. V. also adopted a distance scale of net rates, sometimes called reshipping rates, which are lower than its local rates and conditioned upon the manufactured product of the logs being forwarded from the milling point over the Illinois Central or Y. & M. V. In 1903 this scale of net rates was adopted by the Illinois Central for application on certain of its lines, and in 1908 the application was extended to all of its lines south of the Ohio River, but it has never been applied as a joint continuous distance scale between points on the Illinois Central and Y. & M. V.

Prior to July 1, 1916, the joint rates on lumber applied on logs from Y. & M. V. points in Mississippi to Illinois Central points north of Memphis, including Dyersburg and Trimble. On that date the application of the lumber rates on logs to these points was canceled and the combination of local log rates to Memphis and net log rates beyond became applicable, resulting in a reduction in the through rates. Logs shipped to local stations and there milled are subject to charges at the net rates; but, until recently, logs shipped to junction points were charged the local rates, and upon proof that the manufactured product, in the proportion of 1 pound of lumber to 3 pounds of logs, had been forwarded over the Illinois Central or Y. & M. V., a refund was made down to the basis of the net rates. In order to reduce the amount of money paid in by shippers and held by the carrier for refund upon proof of shipment of the lumber, the Y. & M. V. published "billing" rates from its stations to Memphis only, which were generally lower than its local rates but higher than the net rates.

On July 15, 1916, the billing rates to Memphis were made applicable in connection with the net rates beyond, which resulted in some increases, but generally in reductions in the through rates.

Since December 1, 1919, charges have been collected at the net rates in all instances where the shipper or mill operator agrees to forward the manufactured product over the Illinois Central or Y. & M. V., and furnishes a bond as security therefor.

Complainants contend that the Illinois Central and Y. & M. V. should be considered one line for rate-making purposes, and that a reasonable basis of rates would be the scale of net log rates applicable locally between points on each of those lines applied as a joint continuous distance scale. They show that practically all of the stocks and bonds of the Y. & M. V. are owned by the Illinois Central, and that, with the exception of general and district superintendents, they have the same executive and administrative officers. It is also pointed out that, under orders of the Mississippi Railroad Commission, the local log scale of the Y. & M. V. is operated as a joint continuous distance scale from points on one line to points on the other line on intrastate traffic in Mississippi.

The following table, compiled from an exhibit introduced by complainants, shows the rates from representative Y. & M. V. stations in Mississippi to Dyersburg and the proposed rates. All rates to Trimble would be 0.5 cent higher.

Stations.	Distances.	Present net rate.	Proposed net rate.
	Miles.	Cents.	Cents.
Walls, Miss.....	91	7	8.5
Penton, Miss.....	101	8	9.5
Hollywood, Miss.....	110	8.5	9.5
Maud, Miss.....	124	9.5	10.5
Glover Hill, Miss.....	146	10.5	11.5
Gum Pond, Miss.....	166	11.5	12.5
Sunflower, Miss.....	199	12.5	13.5
Howard, Miss.....	230	13	14
Yazoo City, Miss.....	253	13	14
Vicksburg, Miss.....	296	14	15

Defendants concede that there is no reason from an operating or traffic standpoint for maintaining lower rates from Illinois Central points in Mississippi through Memphis to Dyersburg and Trimble than apply from Y. & M. V. points to the same destinations for like distances. Complainants state that, for operating reasons, logs shipped from Illinois Central points south of Jackson, Miss., to Dyersburg are moved from Jackson to Memphis over the rails of the Y. & M. V., and beyond over the Illinois Central, at rates based on the Illinois Central scale of net rates, while higher combination rates apply from intermediate points on the Y. & M. V. This departure from the long-and-short-haul rule of the fourth section is protected by an appropriate application not heard with this case.

The net rates applicable on logs on other lines in this territory, including lines both east and west of the Mississippi River, are shown

to be considerably lower than the rates assailed and generally as low as the proposed rates, or lower, but the average of the net rates of other lines is somewhat lower than the proposed rates for distances over 220 miles. The average of the rates assailed from 32 Y. & M. V. stations to Dyersburg, for distances of 83 to 296 miles, is 10.84 cents, and the average of the proposed rates from and to the same points is 6.84 cents, while the average net rates on other lines for the same distances are 6.94 cents. Complainants contend that operating conditions on some of the other lines shown are less favorable than those affecting the traffic in question. The net operating revenue per mile of road of the Illinois Central and Y. & M. V. is compared with the corresponding revenue of other trunk lines in this territory, with favorable results.

The rates assailed and the proposed rates are compared with local rates on logs found reasonable in *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 38 I. C. C., 432; *Chattanooga Log Rates*, 30 I. C. C., 36, 35 I. C. C., 163; and *Pierpont Mfg. Co. v. S. Ry. Co.*, 50 I. C. C., 81. Allowing for the 25 per cent advance under general order No. 28, and deducting the bridge toll from the rates from points west of the Mississippi River to Memphis, which were involved in the first case mentioned, the rates assailed are considerably higher than the local rates found reasonable in these cases, while the proposed net rates are about the same as the local rates found reasonable in the last case mentioned for distances up to 150 miles, but somewhat lower than the local rates found reasonable in the other cases.

The following table compares the earnings under the rates assailed and under the proposed rates with the average earnings of the Illinois Central and Y. & M. V. on all revenue freight in the year 1918:

	Average hauls.	Rates.	Earnings per ton- mile.	Earnings per car- mile. ¹
Illinois Central:	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
All revenue freight.....	271.32	-----	6.37	16.552
Under rates assailed.....	271.32	14	10.08	27.608
Under proposed rates.....	271.32	9	7	17.753
Yazoo & Mississippi Valley:				
All revenue freight.....	187.6	-----	7.45	18.357
Under rates assailed.....	187.6	12	10.2	24.232
Under proposed rates.....	187.6	7	7.46	18.96

¹ Car-mile earnings under log rates are based on an average loading of 53,517 pounds per car.

Complainants assert that logs are desirable traffic because they are a heavy low-grade commodity, move in large volume the year around, are not susceptible to damage in transit, and produce an immense volume of lumber traffic, for which reasons log rates, especially net rates, are always among the lowest of all rates on log-hauling lines.

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Defendants contend that the fact that the rates assailed are made on Memphis combination does not render them unreasonable, and point out that that basis is not unusual, even between different divisions of the same line or system. They show that the rates assailed are lower than the combination of local rates to Memphis and the local rates beyond, and that they are lower than the combination rates applicable from points on independent lines for like distances to Dyersburg. The usual basis of rates on logs between points on the Y. & M. V. and points on the Illinois Central is the combination of local rates to the junction point and net rates beyond, and defendants contend that the rates assailed, being based on the billing rates to Memphis, are more favorable than the rates applicable from points on one line to points on the other line through any other junction point.

Defendants state that their scales of log rates, both local and net, were established in pursuance of a policy of developing the country by encouraging the clearing of the land at a time when logs were very cheap, and that they were made without regard to the adequacy of the revenue derived therefrom. It is also said that river competition with the Y. & M. V. influenced a low basis of rates, especially for the longer distances. When these log rates were established hardwood logs sold as low as 50 cents per 1,000 feet but are now worth from \$20 to \$150 per 1,000 feet; and defendants assert that it was expected that the movement would be for only short distances to near-by mills. The average haul on the Y. & M. V. is now 67 miles and on the Illinois Central 77 miles, but is constantly increasing; and defendants assert that to apply their individual scales of net rates as a joint continuous distance scale would open the door for the long-distance movement of logs from Y. & M. V. territory to the Ohio River crossings and beyond at unremunerative rates.

It is contended that the local rates are substantially the same as the local rates applicable on other lines in this territory; and that the rates assailed should be compared with the local log rates rather than with the net rates of these and other lines, on the ground that the net rates are a special concession to the lumber industry and are below the level of reasonable rates. Defendants assert that their scale of net rates is substantially lower than the net rates applicable on other lines in this territory, but in their comparisons of net rates they include certain lines which maintain only one set of rates on logs not conditioned upon the manufactured product being shipped out over the line bringing in the logs. Eliminating the lines which do not publish net rates, as well as lines not in this territory, and deducting the bridge toll from the rates from points west of the Mississippi River to Memphis, defendants' comparisons

do not differ very materially from the similar comparisons submitted by complainants, and it appears that defendants' scale of net rates is as high as or higher than the average of the net rates applicable on other lines in this territory for the distances here considered up to 220 miles. It appears from complainants' and defendants' comparisons that the only other lines in this territory which publish net rates for distances over 220 miles are the Louisville & Nashville, Mobile & Ohio, Missouri Pacific, Chicago, Rock Island & Pacific, and St. Louis Southwestern. Defendants' scale of net rates for distances over 220 miles up to and including all distances here considered and the average of the net rates of the above lines for the same distances, as shown by the exhibits, are as follows:

Distances.	Illinois Central and Y. & M. V.	Average of other lines.
	Cents.	Cents.
225 and over 220 miles.....	8	8.7
230 and over 225 miles.....	8	8.1
235 and over 230 miles.....	8	8.1
240 and over 235 miles.....	8	8.1
245 and over 240 miles.....	8.5	8.3
250 and over 245 miles.....	8.5	8.4
255 and over 250 miles.....	8.5	10
260 and over 255 miles.....	8.5	10
265 and over 260 miles.....	9	10
270 and over 265 miles.....	9	10
275 and over 270 miles.....	9	10.2
280 and over 275 miles.....	9	10.5
285 and over 280 miles.....	9	10.5
290 and over 285 miles.....	9	10.5
295 and over 290 miles.....	9	10.5
300 and over 295 miles.....	9	10.9
305 and over 300 miles.....	9.5	11
310 and over 305 miles.....	9.5	11
315 and over 310 miles.....	9.5	11

Defendants compare the rates assailed to Dyersburg with the local rates on logs for like distances on other lines in this territory, showing that for distances under 150 miles the rates assailed are generally as low as or lower than the average of the local rates of other lines, but for greater distances they are generally higher than the average of the local rates of other lines.

They also compare the rates assailed with rates on logs for like distances from Ohio River crossings to points in central territory, showing that the rates assailed are in most instances as low as the rates referred to for comparison, or lower. But it is not shown that the conditions surrounding the movement of logs north of the Ohio River are similar to those surrounding the traffic in question.

Defendants point out that the Y. & M. V. closely parallels the Mississippi River and its tributaries and that heavy losses have been suffered from overflows; that it has many branch lines, upon which 71 per cent of its log traffic originates; and that much of the territory served is productive of but little traffic.

It is contended that the normal basis of rates on logs is the lumber basis and that conditions do not justify lower rates on logs than on lumber, which loads more heavily. The lumber rates to Paducah, Ky., and other Ohio River crossings, which are asserted to be depressed by competitive influences, apply to Dyersburg and Trimble because they are intermediate points.

The following table, compiled from defendants' exhibit, is a comparison of the earnings per car and per car-mile under rates on logs and other low-grade commodities for approximately 200 miles, which distance closely approaches the average haul on the traffic in question :

Commodities.	From—	To—	Distances.	Average weights.	Rates.	Earnings per car.	Earnings per car-mile.
			<i>Miles.</i>	<i>Pounds.</i>	<i>Cents.</i>		<i>Cents.</i>
Logs.....	Shaw, Miss.....	Dyersburg, Tenn..	200	48,000	12.5	\$61.25	30
Crushed stone.....	Cedar Bluff, Ky..	Lucy, Tenn.....	200	80,000	7	56.00	28
Gravel.....	Gravel Switch, Ky.	Hudsonville, Miss..	195	80,000	7	56.00	28.7
Cement.....	Koussodale, Ky..	Stiles, Ky.....	200	68,000	12.5	85.00	42.5
Clay.....	Clayburn, Ky.....	Lilney, Ky.....	200	74,142	8	59.31	29.6
Sand.....	Memphis, Tenn...	Madison, Miss....	190	80,000	7	56.00	29.1
Brick.....	do.....	Harlee, Miss.....	201	80,000	8.5	51.00	25.6
Coal.....	Central City, Ky..	Oakfield, Tenn....	203	80,000	8.75	70.90	34.4

- Defendants point out that about 90 per cent of the log traffic is handled on flat cars and other cars generally can not be used; that usually no return loading is available for such cars and the empty movement is practically 100 per cent; that considerable damage is done to equipment by dropping logs on the floor of the cars in loading; that logs frequently shift in transit, requiring readjustment of the load before reaching destination, especially on long hauls; that they sometimes fall from cars in transit, the danger of an accident from a fallen log being especially great on a double-track line such as the Illinois Central line north of Memphis; that logs are handled on what are called pick-up trains which are required to run light much of the time; and that the average time required to move a loaded car from Y. & M. V. points to Dyersburg or Trimble is from seven to nine days, while the return movement it is said, would require at least five days more, a total of 12 to 14 days.

We have repeatedly held that the Illinois Central and Y. & M. V. should be treated as one line for rate-making purposes. *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, 253; *Capital City Oil Co. v. Y. & M. V. R. R. Co.*, 39 I. C. C., 141; *Lamb-Fish Lumber Co. v. A., C. & Y. Ry. Co.*, 49 I. C. C., 187. The rates assailed are conditioned upon the manufactured product being shipped out over the line bringing in the logs, and it is only fair that they should be compared with log rates similarly conditioned. De-

defendants' individual scales of net rates have been maintained for many years without change other than under general rate advances; they are in line with the net rates applicable on other lines in the same territory for the distances here concerned up to 220 miles; and the earnings thereunder appear to be as high as the average earnings of these carriers on all revenue freight. For distances over 220 miles defendants' scale of net rates is lower than the average of the net rates for like distances on other lines in this territory, and upon the whole record we do not believe that defendants should be required to extend that part of their scale from Y. & M. V. points to Dyersburg and Trimble as a joint continuous distance scale.

We find that the rates on hardwood logs, in carloads, from points on the Y. & M. V. in Mississippi north of Vicksburg and Jackson, to Dyersburg and Trimble, Tenn., conditioned upon the manufactured products of the logs being shipped from Dyersburg and Trimble over the Illinois Central, are, and for the future will be unreasonable to the extent that they exceed, for distances up to and including 220 miles, defendants' individual distance scales of net rates similarly conditioned applicable between points on their respective lines to be applied as a joint continuous distance scale; and for greater distances to the extent that they exceed the following distance scale of net rates similarly conditioned to be applied as a joint continuous distance scale, subject to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

235 miles and over 220 miles.....	8.5 cents.
250 miles and over 235 miles.....	9.0 cents.
265 miles and over 250 miles.....	9.5 cents.
280 miles and over 265 miles.....	10.0 cents.
295 miles and over 280 miles.....	10.5 cents.
310 miles and over 295 miles.....	11.0 cents.
315 miles and over 310 miles.....	11.5 cents.

An appropriate order will be entered.

61 I. C. C.

No. 11250.
BRIGGS & TURIVAS
v.
DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

Submitted November 23, 1920. Decided April 2, 1921.

Minimum applicable on steel turnings, in carloads, from Elmira, N. Y., to points in New York, Ohio, and Pennsylvania found not unreasonable or otherwise unlawful. Complaint dismissed.

John Andrew Roman for complainant.

Edwin A. Lucas for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

BY DIVISION 2:

Exceptions were filed by the defendants to the report proposed by the examiner, and the case was orally argued before us. We have reached a conclusion different from that recommended by the examiner.

Complainant, a corporation, is engaged in the manufacture and sale of iron and steel at Chicago, Ill. By complaint seasonably filed it alleges that the charges collected on 125 carloads of steel turnings, based on a minimum of 56,000 pounds, shipped during the period from May, 1917, to June, 1919, from Elmira, N. Y., to Charlotte, N. Y., Youngstown and Middletown, Ohio, and Johnstown, Saxton, and Brackenridge, Pa., were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded those based on a minimum of 44,800 pounds. The prayer is for reparation and the establishment of a reasonable minimum for the future.

Steel turnings are thin shavings of steel produced by lathes in milling operations and are used for remelting purposes. The shipments moved in open cars of various designs with level full capacities ranging from 637 cubic feet to 1,693 cubic feet. The weight of the shipments ranged from 31,800 pounds to 56,000 pounds; the average weight was 53,000 pounds on 53 shipments, 44,800 pounds on 53 shipments, and 37,400 pounds on the remaining 19 shipments; and the general average of those cars was about 47,100 pounds.

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Defendants state that during the period the shipments in controversy moved, complainant made 216 other shipments of turnings from Elmira, all but 10 of which were loaded to or in excess of 56,000 pounds. The average loading of these 216 cars was about 63,470 pounds and of the 341 shipments 57,491 pounds. A number of the 216 shipments referred to were loaded in excess of 70,000 pounds in cars of the same cubic capacity as many of the cars in controversy, and four shipments weighed over 80,000 pounds each. The average capacity of all of the cars used by complainant during the period in question was 1,325.2 cubic feet. One car with a capacity of 1,373 cubic feet contained 61,500 pounds, while another car of the same capacity contained 43,900 pounds. Defendants show by reference to actual shipments that turnings load in excess of the minimum between many points in Pennsylvania and New York. Complainant contends that it was physically impossible to load the cars furnished to the prescribed minimum; and that 85 per cent of the cars were loaded to the full visible capacity. Its witness had no personal knowledge that the cars were actually loaded to the full visible capacity.

The shipper requested the originating carrier to furnish large, high-sided, low, hopper-bottomed gondola cars. Many of the shipments moved when the character of equipment requested was being utilized to the fullest possible extent for the transportation of coal to fill one of the greatest national emergencies. Complainant refused to accept box cars, while other shippers were building up the sides of such open cars as could be withdrawn from the coal trade, so as to load as nearly as possible to the carrying capacity, and others had materially exceeded the minimum prescribed, while the shipper at Elmira was not in all instances even loading its cars level full.

Admitting that it was impossible to load the minimum in a few of the cars used, it does not necessarily follow that the minimum was unreasonable. *Montague & Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C., 72. In *McLoughlin v. T. & P. Ry. Co.*, 26 I. C. C., 307, we considered a minimum applicable regardless of the size of the car for a commodity which varies in density and held that the straight minimum was not unreasonable. The test is: What can ordinarily be done?

It is asserted in behalf of complainant that in the sale of steel turnings in Elmira it comes in competition with turnings produced at Chicago, also Toledo and Cleveland, Ohio, and other manufacturing points in central freight association territory, from which the minimum is 44,800 pounds, and that the maintenance by defendants of a lower minimum of turnings from these competing points subjects complainant to undue prejudice and disadvantage in marketing

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its turnings from Elmira. Complainant also states that steel turnings compete with scrap iron and scrap steel, which move from Elmira and other points at a minimum of 44,800 pounds in practically all instances at the same rates that apply on turnings.

The fact that one point has a higher minimum than another does not of itself constitute undue preference within the meaning of the act. *Tulsa Traffic Assn. v. A., T. & S. F. Ry. Co.*, 40 I. C. C., 9.

The minimum of 56,000 pounds on steel turnings has been in effect since January, 1908, and applies between substantially all points east of Buffalo, N. Y., and Pittsburgh, Pa., and although a lower minimum applies between points in central freight association territory, it is stated that the actual loading there generally exceeds the minimum.

In justification of a lower minimum on scrap iron and steel than on turnings, defendants state that substantially all turnings originate at large manufacturing plants where their production is regular and in substantial quantities, while scrap iron and steel may originate at any point, including small country stations, where the supply is generally restricted and the minimum is made low to encourage the movement; and that the actual loading of scrap in most instances is materially in excess of the minimum.

We find that the minimum complained of is not unreasonable or otherwise unlawful. The complaint will be dismissed.

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No. 11322.

EARL C. ANTHONY, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT, MICHIGAN CENTRAL
RAILROAD COMPANY, ET AL.

Submitted January 3, 1921. Decided March 26, 1921.

Rates charged on a mixed carload of freight and passenger automobile chassis parts from Detroit, Mich., to San Francisco, Calif., found applicable and not unreasonable but found unjustly discriminatory and unduly prejudicial. Nondiscriminatory rate prescribed for the future. Reparation denied.

Charles Clifford for complainant.

G. H. Baker and *E. W. Camp* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions to the examiner's proposed report were filed.

Complainant is a corporation engaged in the distribution and sale of automobiles and automobile parts at San Francisco, Calif. By complaint filed March 13, 1920, as amended, it alleges that the rates charged on a carload of parts of self-propelling vehicles shipped June 25, 1918, from Detroit, Mich., to San Francisco, were unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates will be stated in amounts per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipment weighed 14,450 pounds and consisted of various parts used in the construction of the chassis of freight and passenger automobiles. It moved over defendant carriers' lines and freight charges were collected in the sum of \$558.91, at a carload commodity rate of \$3.875, minimum 9,100 pounds, as provided by rule 6-B, western classification, on 8,875 pounds; a second-class less-than-carload rate of \$3.79 on 4,791 pounds of iron and steel parts; and a less-than-carload commodity rate of \$3.15 on 784 pounds of springs. The carload rate applied to straight or mixed carloads of passenger auto-

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mobile parts and mixed carloads of freight and passenger automobile parts.

Complainant urges that the rate applicable to the shipment was a commodity rate of \$3.25, provided in defendants' tariff for self-propelling vehicles and parts thereof as follows:

Chassis for self-propelling freight vehicles, N. O. S.,
Tractors, vehicle (Driving Attachments for vehicles or fire apparatus),
Vehicles, self-propelling, freight, N. O. S. (not including delivery
wagons with closed tops).

NOTE 1.—Not subject to Rule 5 of tariff (and as amended).

NOTE 2.—Rates named will also apply on shipments of extra parts
(finished or unfinished) of articles named in this item, except extra
Cyclometers, Headlights, Horns, Lamps, Pneumatic Tires, Search-
lights, Speedometers and Wind Shields.

Obviously the rate covered by this item description was inapplicable as it applied only to freight vehicles and parts thereof, whereas complainant's shipment included parts of both freight and passenger vehicles. The rates charged were applicable.

Complainant contends that a lower rate on freight chassis parts than on passenger chassis parts is unjustly discriminatory to shippers of mixed carloads of passenger and freight chassis parts because the distinction is predicated upon the respective uses of the two classes of articles. In support of this contention evidence was introduced showing that the principal chassis parts of Packard freight and passenger automobiles, including motor, clutch, transmission, and differential, are substantially similar in construction and appearance and are interchangeable in use; that with the exception of body construction every part of the Reo passenger vehicle is identical with corresponding parts of the same make of freight vehicle; and that this similarity and interchangeability between freight and passenger parts exists in substantially all makes of automobiles; that these common characteristics make it impracticable for defendants to distinguish many parts of freight automobiles from corresponding parts of passenger automobiles.

Complainant further urges that the existing rates enable exclusive shippers of freight parts to secure transportation at lower cost than those whose business is in both freight and passenger parts, which must be shipped together. It refers to the fact that consolidated freight classification No. 1 names ratings on automobile chassis, set up or knocked down, which apply to parts of both freight and passenger vehicles without distinction.

Defendants admit that the transportation characteristics of freight and passenger automobile chassis parts are substantially similar and agree that there is no sound reason for a distinction in rates as between them.

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Chassis parts of passenger and freight automobiles are a like kind of traffic within the meaning of that term as employed in section 2 of the act, and their transportation characteristics are practically identical. The only substantial difference between the two classes of parts is the use to which they are put. Rates may not be predicated upon the proposed use of commodities transported. *Int. Com. Comm. v. Balt. & Ohio R. R.*, 225 U. S., 326.

No evidence was offered to show that the rates under attack were unreasonable.

We find that the rates charged and assailed were applicable and not unreasonable, but that they were, are, and for the future will be, unjustly discriminatory and unduly prejudicial to the extent that they exceeded or may exceed the rate contemporaneously applicable on freight automobile chassis parts from and to the same points. The record does not afford a basis for a finding that complainant has been damaged by reason of the unjust discrimination and undue prejudice found to have existed.

An appropriate order will be entered.

61 I. C. C.

No. 10248.

CLIMAX MOLYBDENUM COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ANN ARBOR RAILROAD
COMPANY, ET AL.

Submitted June 6, 1919. Decided March 29, 1921.

Rates assessed on complainant's shipments of molybdenum, in carloads, from Climax, Colo., to destinations on and east of the Missouri River via Denver, Colo., found legally applicable and not unreasonable, unduly prejudicial, or unlawful under section 20 of the interstate commerce act. Complaint dismissed.

Clifford Thorne for complainant.

E. E. Whitted and *John Q. Dier* for Colorado & Southern Railway Company.

James L. Coleman and *D. L. Meyers* for Director General.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation engaged in producing molybdenum at Climax, Colo., alleges by complaint filed September 3, 1918, that the combination through rates charged for the transportation of molybdenum, in carloads, from Climax via Denver, Colo., to destinations on and east of the Missouri River were and are unreasonable, unduly prejudicial, and otherwise illegal, and that the failure of defendants to establish rates on this commodity, for the movement from Climax to Denver, dependent upon declared or released values, is unreasonable and subjects complainant to undue prejudice. Appropriate relief for the future is asked. At the hearing the complaint was amended by the addition of an allegation that the rates from Climax to Denver were unlawful under that portion of section 20 of the interstate commerce act known as the second Cummins amendment. A prayer for reparation was also added but subsequently abandoned. Unless otherwise indicated, rates will be stated in cents per 100 pounds.

Molybdenum, a concentrate of molybdenite ore, resembling powdered graphite in appearance, is used as a basic alloy in steel to increase its strength and tensile qualities, competing principally with tungsten and vanadium. It is shipped in double sacks in box cars. Its market value is about \$1,250 per net ton.

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Complainant was incorporated in February, 1918. At the time of the hearing its mine and concentrating mill at Climax had temporarily suspended operations because of adverse market conditions. In 1918 it shipped about 575 tons, principally to Pittsburgh, Pa., and New York and Niagara Falls, N. Y.

Climax, 137 miles west of Denver and 14 miles east of Leadville, Colo., is a nonagency station on a narrow-gauge line of the Colorado & Southern Railway, hereinafter referred to as defendant. Shipments originating on this line are transferred to standard-gauge cars at Denver for through movements, the lading of two narrow-gauge cars being equivalent to one standard-gauge carload. There are no joint rates on ore from Climax to the ultimate destinations to which complainant ships. The through rates are constructed by combining the rates to and from Denver and Omaha, Nebr., a representative Missouri River point. Only the component covering the movement from Climax to Denver is directly involved in this proceeding. Defendant's tariffs contained the following provisions and rates applicable to carload shipments of ores and concentrates from Climax to Denver:

Item No. 5170: Ore and Concentrates, actual gross value not exceeding \$12 per net ton, carloads, minimum weight 24,000 pounds. (See Item No. 535) -----	14 cents
Item No. 5175: Ore and Concentrates, actual gross value exceeding \$12 but not exceeding \$100 per net ton, carloads, minimum weight 24,000 pounds -----	19 cents
Item No. 5180: Ore and Concentrates, actual gross value exceeding \$100 per net ton, carloads, minimum weight 24,000 pounds -----	25 cents

A rate of 17 cents, minimum 40,000 pounds, is maintained by the principal lines on shipments made under a declared valuation of \$100 or less per net ton, and so receipted for, from Denver to Omaha, 538 miles. From Omaha to New York, a representative destination, 1,394 miles, the rate is 29 cents, minimum 50,000 pounds, with no limitation as to value. The combination through rate from Climax to New York, 2,069 miles, is 71 cents.

The issues presented for our determination are (1) the applicability under section 6 of the interstate commerce act of the rates charged; (2) the legality of the rate from Climax to Denver under the second Cummins amendment; (3) the character of this rate, whether unreasonable or unduly prejudicial; (4) the reasonableness of requiring defendant to establish rates from Climax to Denver on complainant's shipments of this commodity dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property. They will be discussed in the order stated.

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The tariff publishing the rate from Climax to Denver contained the following provision under the caption "Assessment of Charges on Shipments of Ore and Concentrates" (item No. 535):

Shipments will be way-billed at the rate applying on ore valued at \$100 per ton of 2,000 pounds. If consignee or his agent shall, after receipt of shipment at destination, deliver to the agent of the carrier at that point a certificate of a sampler or smelting company showing that the valuation of the ore (without deductions for freight, sampling, smelting or other charges), is such as to entitle it to the lower rates named in the Tariff or as amended, the billing and charges will be corrected accordingly.

Complainant contends that under the foregoing provision its shipments should have been billed and charges collected at the 19-cent rate applicable on ore and concentrates ranging in value from \$12 to \$100 per ton. Its traffic manager testifies that, notwithstanding its requests to be accorded this rate, defendant refused to accept complainant's shipments unless the bills of lading bore the notation, "Value over \$100 per net ton," and assessed charges accordingly under the 25-cent rate. Defendant points out that item No. 5170 bore reference to item No. 535, while items Nos. 5175 and 5180 did not, and explains that item No. 535 was incorporated in its tariff at a time when no ore worth more than \$100 per ton was being shipped, and was intended to enable shippers whose ore is worth \$12 or less per ton to obtain the lower rate. To adopt the construction contended for by complainant would defeat the clear intent of the tariff, as evidenced by the specific language of item No. 5180, to the effect that the 25-cent rate applies to shipments of ore and concentrates having an actual gross value in excess of \$100 per net ton. We find that the 25-cent rate collected was legally applicable on complainant's shipments.

In the case at bar the evidence shows that defendant's general freight agent had sufficient knowledge as to the true value of complainant's product to require the notation "Value over \$100 per net ton" to be placed on the bills of lading to prevent misdescription. This was in no sense "the value declared in writing by the shipper or agreed upon in writing as the released value of the property" within the purview of the second Cummins amendment. Billing so indorsed does not limit the shipper's recovery of the full actual value whatever it might be.

If defendant desires to carry rates on ore based upon declared or released values it should seek approval of rules that will clearly effect the purpose and be free from question as to conformity with the Cummins amendment. It might well also provide a specific rate on the molybdenite ore or concentrates.

In support of its allegation of unreasonableness complainant compares the rate from Climax to Denver with the combination rate to New York and the other factors thereof in the following statement:

From—	To—	Dis- tances.	Rates.	Ton-mile revenues.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Climax, Colo.....	Denver, Colo.....	187	25	38.5
Denver, Colo.....	Omaha, Nebr.....	538	17	6.3
Omaha, Nebr.....	New York, N. Y.....	1,894	50	4.3
Climax, Colo.....	do.....	2,080	71	6.9

¹ Actual gross value exceeding \$100 per net ton.

² Declared valuation of \$100 or less per net ton.

³ No restriction as to value.

It will be observed that the ton-mile revenue for the entire movement, as well as for the portion east of Denver, is exceedingly low in comparison with that under the rate from Climax to Denver, and from this fact complainant argues that the latter is out of line with the other components. In this connection, however, it must be borne in mind that the movement to Denver is over a narrow-gauge line, on which the grades are shown to be heavy.

Complainant also contrasts the 25-cent rate from Climax to Denver with other rates on ore and concentrates in the same general territory, among which are the following:

From—	To—	Values per net ton.	Dis- tances.	Rates.	Ton-mile revenues.
			<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Climax, Colo.....	Denver, Colo.....	Over \$100.....	187	25	38.5
Coalmont, Colo.....	Laramie, Wyo.....	Released to \$100.....	111	15.5	27.9
Hachita, N. Mex.....	El Paso, Tex.....	Not over \$200.....	119	15.5	26.1
Deming, N. Mex.....	do.....	Not over \$125.....	126	12.5	19.8
Hassayampa, Ariz.....	Hayden, Ariz.....	Not over \$100.....	133	17	25.6
Elton, Mont.....	Butte, Mont.....	Over \$100.....	134	13	19.4
Carney, Mont.....	do.....	do.....	145	15	20.7
Salida, Colo.....	Denver, Colo.....	Not over \$100.....	215	18.75	17.44
Douglas, Ariz.....	El Paso, Tex.....	do.....	217	25	28
Sand Point, Idaho.....	East Helena, Mont.....	do.....	311	20.5	13.2

The rates cited in the foregoing table, except those from Coalmont and Hassayampa, apply over standard-gauge main lines. Their probative value is impaired by the absence of any showing of appreciable movements thereunder or of similarity of transportation conditions. Other exhibits filed by complainants include comparisons of earnings under the 25-cent rate with those on all freight hauled by defendant, showing the ton-mile earnings on molybdenum to be about three times those representing the average on all traffic and the car-mile earnings to be a little less than double the average on all freight carried by defendant. These ratios do not appear excessive, however, in view of the extraordinarily high value of molybdenum.

Complainant's principal competitor is located at Empire, Colo., a station on the Denver-Silver Plume narrow-gauge branch of defendant's line between Lawson and Georgetown, Colo., 45.6 miles from Denver. A rate of 17 cents applies on ore and concentrates valued at over \$30 but not exceeding \$100 per net ton from Empire to Denver. The current rate on ore and concentrates, having an actual value of \$1,250 per net ton, from Empire to Denver is \$14.90 per net ton, compared with \$5 per net ton from Climax to Denver. It is apparent, therefore, that complainant is not subjected to any disadvantage.

Complainant bases its prayer for the establishment of rates dependent upon declared or released values largely on the fact that no greater service is required of defendant in the transportation of ore worth \$1,250 per ton than in that of ore valued at \$100 or less. It also urges that the risk of loss or damage through pilferage or other cause is remote and states that it is willing to carry its own insurance for the value of its shipments in excess of \$100 per ton. In stressing the cost of service and risk assumed, both of which are important considerations in rate making, complainant ignores another consideration equally important, namely, the value of the service, *Nor. Pac. Ry. v. North Dakota*, 236 U. S., 585, 599; *Coke Producers Asso. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125, 132; *Silk Association of America v. P. R. R. Co.*, 44 I. C. C., 578, 580.

Upon the facts of record we are of opinion and find that the rates assailed were legally applicable to the shipments which moved thereunder and that they were not and are not unreasonable or unduly prejudicial. We further find that it would not be just and reasonable under the circumstances and conditions surrounding the transportation of complainant's shipments to require the Colorado & Southern to establish and maintain rates thereon dependent upon and varying with declared or agreed values. The complaint will therefore be dismissed.

COMMISSIONER ESCH did not participate in the disposition of this case.

INVESTIGATION AND SUSPENSION DOCKET No. 1266.

SMELTER PRODUCTS FROM NEVADA AND UTAH

Submitted April 1, 1921. Decided April 15, 1921.

Proposed rates on unrefined copper from Garfield Smelter and International, Utah, and McGill, Nev., to San Francisco and Oakland, Calif., found justified. Order of suspension vacated and proceeding discontinued.

James S. Moore, jr., and Lester J. Hinsdale for Western Pacific Railroad Company; and *R. G. Lucas, A. C. Ellis, jr., and Dickson, Ellis & Adamson* for Bingham & Garfield Railway Company and Nevada Northern Railway Company.

Bagley, Fabian, Clendenin & Judd for American Smelting & Refining Company; *H. W. Prickett* for Utah Chapter of American Mining Congress and Chamber of Commerce and Commercial Club of Salt Lake City; and *Frank Lyon* for Luckenbach Steamship Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

By schedules filed to become effective December 30, 1920, The Western Pacific Railroad Company and certain short-line connections propose to establish to San Francisco and Oakland, Calif., joint carload rates on copper, viz, anodes, bar, blister, bullion, cakes, cathode, ingots, matte, pig, residue (residue of slag from copper ore), slabs, smelted sulphate, hereinafter collectively referred to as copper bullion, as follows: From Garfield Smelter and International, Utah, 32.5 cents per 100 pounds, or \$6.50 per ton, and from McGill, Nev., 88 cents per 100 pounds, or \$7.60 per ton. The operation of these rates, which represent substantial reductions from the present rates, was suspended until April 29, 1921, upon our own motion pending an investigation into their lawfulness. Rates will be stated in this report in amounts per net ton of 2,000 pounds.

The present rates between the points named are on a class basis. Practically all of the commodities named are rated fourth class in the current western classification and take rates of \$33.80, \$31, and \$51.90 from Garfield Smelter, International, and McGill, respectively. Copper matte is rated class A and takes the class-A rate of \$44.70 from McGill, but by exceptions to the classification takes ratings dependent upon value from Garfield Smelter and International. These ratings and the appropriate rates from the two last-

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named points, so far as they are of interest in this proceeding, are as follows:

	Class.	From Garfield Smelter.	From Inter- national.
Value over \$100, not over \$200.....	B	\$21.90	\$19.65
Value over \$200, not over \$300.....	A	28.00	25.15
Value over \$300, not over \$500.....	4	33.80	31.00

Copper bullion from the smelters at the named points of origin is shipped to New York or Baltimore to be there refined. The present all-rail rate to New York is \$22 from all three points of origin. To Baltimore the all-rail rate from McGill is \$21.20, and from Garfield Smelter and International is \$21.40. The record indicates that there has not heretofore been and is not now any movement to those refining points via the California ports in connection with coast-to-coast water lines. The object of establishing the proposed rate is to form an available route in connection with water carriers operating through the Panama Canal. Representatives of the smelting companies and commercial organizations appeared at the hearing in support of the proposed rates. No one has appeared in opposition thereto, or has voiced any protest in the record.

Garfield Smelter is situated on the Bingham & Garfield Railway, about 3 miles south of the junction of that line with the Western Pacific at Garfield, Utah. The latter point is 15 miles west of Salt Lake City, Utah, and 913 miles east of San Francisco. Hereinafter the term Garfield will refer to Garfield Smelter rather than Garfield proper unless otherwise indicated. International is located on the Tooele Valley Railway, 7 miles east of Warner, Utah, the terminus of a short branch of the Western Pacific that joins the main line at Burmester, Utah. McGill is situated on the Nevada Northern Railway, 113 miles south of Shafter, Nev., the junction with the Western Pacific. The distances to San Francisco from Garfield, International, and McGill via the several routes over which the proposed rates apply are 916, 919, and 878 miles, respectively, and to Oakland 6.6 miles less in each case. Garfield is the principal producing point. International is relatively near Garfield and is substantially similarly situated. For simplicity we shall treat only of the rates to San Francisco from Garfield and McGill.

Respondents showed that the Western Pacific is well constructed for handling tonnage economically. It is longer than the line of the Southern Pacific from Ogden to San Francisco by 145 miles but its grades, which are compensated with respect to curvature, have a maximum of only 1 per cent. Operating and traffic conditions on the Western Pacific are such that bullion moving under the proposed

rate could be handled by it in through California trains from Salt Lake, at little additional expense. The interchange arrangements with the short lines are simple, and the trains pass through no terminals comparable to those through which bullion moving eastward via the all-rail lines must pass. It appears from the record that the normal empty box-car movement on the Western Pacific is westbound, and that ordinarily the bullion would be moved in cars that otherwise would be hauled empty to California.

Copper bullion is desirable traffic as it moves throughout the year, loads heavily, can be carried in any box car capable of being locked, does not impair the availability of the equipment for return loads of other traffic, and despite its considerable value is practically free from loss-and-damage claims. The average annual production of bullion at Garfield for the last decade was about 70,000 tons. It is probable that the annual production at McGill in normal times would be a little less than half that of Garfield.

Based upon the minimum of 80,000 pounds, the proposed rates from Garfield and McGill to San Francisco yield gross ton-mile and car-mile earnings of 7.1 mills and 28.4 cents, and 8.7 mills and 34.6 cents, respectively. Eliminating certain switching absorptions made at the ports and a state toll of 5 cents per ton levied on San Francisco shipments, the net earnings, respectively, would be 6.95 mills and 27.8 cents, and 8.52 mills and 34 cents. Based on the same minimum the net rates would produce car earnings of \$254.80 on shipments from Garfield and \$304 on those from McGill for a minimum load. From exhibits of record it appears that the average ton-mile revenue on all traffic of the Western Pacific is a little below that of all class-1 railroads, but that the average haul per revenue-ton is about three times as great. The ton-mile earnings under the suspended rate would be somewhat less than on all traffic on the Western Pacific, but the haul would be approximately 80 per cent greater than the average on all traffic. During the last 10 months of 1920 the loaded car-miles on the Western Pacific were about 63 per cent of the loaded and empty car-miles. The freight revenue per loaded and empty car-mile is stated to be 16.21 cents. On this basis the revenue per loaded car-mile for the same period was 25.5 cents, which is less than the car-mile revenue under the proposed rate.

Respondent Western Pacific compared the earnings under the \$6.50 rate with those on coal and coke, live stock, and fruits and vegetables, of which a large portion of its traffic consists. The coal movement is almost wholly westbound, and as few eastbound loads for the open-top cars are obtainable, a heavy eastbound empty movement results. Special equipment and care in transportation are required for the live stock and fruits and vegetables. During 1920 refrigerator cars largely moved empty to the producing points be-

cause of the shortage of that class of equipment. Considering the average hauls, loadings, and relative expenses of transportation, the rates under suspension compare favorably with those on the commodities mentioned.

According to an exhibit filed by the Western Pacific covering the months March to November, 1920, inclusive, the freight transportation expenses for that road averaged 3.073 mills per ton-mile, while the portion of all operating expenses allocated to freight averaged 6.086 mills. It does not appear what method of allocation as between freight and passenger expenses was used.

The respondents assert that the rates under suspension are fully compensatory, when the character of the commodity, its volume, direction of movement, and relation to other traffic are considered.

Respondents compare the proposed rates with a rate of \$7.875 on copper bullion from Anaconda, Mont., to Seattle, Wash., and with the \$22 all-rail rate on smelter products applicable to copper bullion from intermountain and Pacific coast smelting points to New York, to show that the suspended rates are not out of line with other rates on smelter products. The following table partially taken from exhibits of record illustrates such comparisons and includes comparisons of the earnings which would be produced by the present class rates to San Francisco from the named smelting points. It is apparent that such class rates are too high to move bullion to the coast ports.

	Dis- tance. ¹	Gross rate.	Port absorp- tions.	Net rate.	Revenue under net rate.		
					Ton- mile.	Car- mile. ²	Per car. ³
<i>Proposed rates.</i>							
To San Francisco:	<i>Miles.</i>				<i>Mills.</i>	<i>Cents.</i>	
From Garfield Smelter	916	\$6.50	\$0.14	\$6.36	6.95	27.8	\$254.48
From McGill	878	7.60	.14	7.46	8.52	34	298.40
<i>Present rates.</i>							
To San Francisco:							
From Garfield Smelter:							
Copper, except matte	916	33.80	.....	33.80	36.90	147.9	1,352.00
Copper matte ⁴	916	21.90	.....	21.90	23.91	95.6	876.00
Do. ⁵	916	28.00	.....	28.00	30.58	122.3	1,120.00
Do. ⁵	916	33.80	.....	33.80	36.90	147.9	1,352.00
From McGill:							
Copper, except matte	878	51.90	.....	51.90	59.10	236.4	2,076.00
Copper matte	878	44.70	.....	44.70	50.90	203.6	1,188.00
To Seattle:							
From Anaconda	838	7.875	1.85	6.025	7.19	28.8	241.00
To New York:							
From Garfield Smelter	2,547	22.00	.....	22.00	8.64	34.6	880.00
From McGill	2,787	22.00	.....	22.00	7.89	31.6	880.00
From Anaconda	2,549	22.00	.....	22.00	8.63	34.5	880.00
From Tacoma	3,197	22.00	.....	22.00	6.88	27.5	880.00
From Selby	3,419	22.00	.....	22.00	6.48	25.7	880.00

¹ Average, except from McGill and Garfield to San Francisco.

² Based on 30,000 pounds per car.

³ Value over \$100, but not over \$200.

⁴ Value over \$200, but not over \$300.

⁵ Value over \$300, but not over \$500.

The present all-rail rate of \$22 is the rate of \$16.50 found not unreasonable in *Anaconda Copper Mining Co. v. Director General*, 57 I. C. C., 723, and *Phelps Dodge Corporation v. Director General*, 57 I. C. C., 714, plus the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220. In comparison with the \$22 rate the rate proposed appears somewhat low, but since the decision of the *Anaconda* and *Phelps Dodge Cases* conditions in the copper industry have changed substantially. The value of copper has fallen 50 per cent and production has decreased materially. It was stated at the argument that the mines had ceased production and that the smelters would cease operation as soon as the mined ore had been treated. Due to the large surplus of copper on the market and its low price, there is no appreciable movement of bullion to the refineries at present, but a considerable tonnage has accumulated at the smelters which would apparently be shipped under the proposed rate if established. At present the water rate from the California ports to New York and Baltimore is \$8 per ton. In computing the through charges there would also have to be added to the rate to the ports, terminal costs and insurance. In addition other indeterminate charges would accrue on some, if not most of such shipments, such as charges for extra handling, storage, maintenance of inspection, loss from abrasion in handling, and interest charges during the time in transit in excess of the all-rail time of transportation. It was estimated by witnesses that the average differential under the all-rail rate to be obtained under the proposed arrangement on shipments from the smelting points to New York and Baltimore would be about \$3.50. If the movement from smelter through refining point to consuming point be considered, that differential would in many cases be greatly reduced or entirely removed as transit arrangements at the refining points are in effect in connection with the all-rail rates which are not available to shipments arriving by water. The adjustment of rates from this western group to points of destination on the Atlantic seaboard, and the relation of those rates to the combination of westbound rail and eastbound water carrier rates, while interesting, is not controlling as to the lawfulness and propriety of the charges sought to be established by the Western Pacific from points near its eastern end to its terminus on the Pacific coast. Though the *Anaconda* rate has been in effect for a number of years, it appears to have moved but a relatively small tonnage as compared with that available at the smelting points interested in the proposed rate, and of that tonnage apparently much was refined at Tacoma and used on the Pacific coast or exported.

Upon a consideration of the facts of record we are of opinion and find that the schedules under suspension have been justified. An order will be entered vacating the order of suspension and discontinuing this proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 1293.
HANDLING CHARGES AT LOUISIANA PORTS.

Submitted April 1, 1921. Decided April 16, 1921.

Proposed revision of charges for handling freight over the piers at New Orleans, La., and points in the New Orleans district, with certain exceptions, found justified.

A. P. Humburg, W. S. Horton, R. V. Fletcher, H. G. Herbel, C. J. Rixey, jr., W. A. Northcutt, T. J. Freeman, and F. H. Wood for respondents.

Carl Giessow, Edgar Moulton, Frank Carnahan, Fayette B. Dow, and Willis Crane for protestants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

It is here proposed to increase the charges for handling freight over the piers at New Orleans, La., and in the New Orleans district, as presently to be described. The tonnage affected consists of export, import, and coastwise freight. The term "handling" as here used means the transferring of the freight between the cars and a convenient place on the pier at the side of the receiving or discharging vessel, and the proper piling of the freight on the pier and its orderly arrangement in the car. The cars are run flush up to the pier. The floor of the car corresponds in height to the floor of the pier, and the handling service consists of conveying the freight, usually by truck, between the car and ship side.

There are about 5 miles of pier front at New Orleans. An extensive frontage is owned by the state, one pier is owned by the federal government, the Illinois Central Railroad owns its Stuyvesant pier, and the Southern its Port Chalmette pier. About two-thirds of all the New Orleans tonnage is handled over the public piers. All the piers so far described are on the east side of the Mississippi River. On the west side the Missouri Pacific and the Texas & Pacific railroads have their joint Westwego pier, and the Southern Pacific has its Algiers pier. The Louisville & Nashville has no separate pier of its own at New Orleans and uses the public piers. The charges, present and proposed, are the same at all the piers described. The proposed charges are found in Emerson's tariff I. C. C. No. 61, filed 61 I. C. C.

to become effective February 13, 1921, and here under suspension in part. The present charges are published in the several tariffs of the respective lines parties to the Emerson tariff.

These handling charges apply on all commodities that pass over the piers at New Orleans, but they are not assessed against the shipper in all cases. They are absorbed by the carriers on all freight originating north of the Ohio and Potomac rivers and east of the Mississippi River, because of the competition of the north Atlantic ports. They are assessed against the shipper on all freight originating south of the south bank of the Ohio River and east of the Mississippi, whether competitive or noncompetitive, and on noncompetitive freight from west of the Mississippi, though there are some instances in which the charge is added on competitive freight and absorbed on noncompetitive freight from this latter territory. The charge is absorbed on perhaps 85 per cent of all the traffic from west of the Mississippi, combined competitive and noncompetitive. Probably less than 50 per cent of the traffic moving over all the wharves at New Orleans would be affected by the handling charges.

The state assesses a "tollage" charge of 15 cents a ton, increased on April 1, 1920, from 5 cents per ton, against all freight for the use of its public piers, and this charge is absorbed by the respondents, except upon certain traffic on which the carriers receive only a switching charge. The public piers are reached only by the New Orleans Public Belt Railroad, and a charge of \$7 a car, increased from \$5 December 24, 1920, made by this switching line is also, with some exceptions, absorbed by the respondents on competitive freight.

The respondents and protestants agree that the present handling charges, taking into account the relative tonnages of light and heavy commodities, average from 25 cents to 30 cents a ton. The proposed charges, computed on the same basis, are estimated by the respondents to average 70 cents a ton, and by the protestants to average from 70 cents to 75 cents a ton. The present and proposed charges on specific commodities selected by the protestants as typical (in cents per 100 pounds except where otherwise stated) are as follows:

Commodity.	Present rate.	Proposed rate.	Commodity.	Present rate.	Proposed rate.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Lumber.....	1-3	4-5	Steel.....	3.5	15
Naval stores.....	1.5-2.25	1.14	Molasses.....	.5	5
Cottonseed meal and cake.....	.9	.50	Salt.....	.70	2.5
Cottonseed oil.....	5	2.5	Iron and steel articles.....	1	2.5
Rice.....	1	2.5	Asphalt.....	.75	2.5
Sugar.....	.75	2.5	Mineral oil, in barrels.....	.5	2.5
Coffee.....	.75	2.5	Mineral oil, in packages.....	1.5	5
Petroleum oils.....	.5	2.5	Paraffin wax.....	.5	2.5
Fertilizer.....	1.5	2.5	Articles, n. o. s.....	1.5	5
Grain and grain products.....	.5	2.5			

¹ Per barrel.

² Per net ton.

³ Per bale.

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It is also proposed to increase the minimum charge for handling from 50 cents to one dollar.

By the application of rates on "Articles, N. O. S." in lieu of the present specific descriptions, the charges on certain articles have been increased, which the carriers at the hearing agreed to change. The charge on hemp will be made on the same basis per 100 pounds as that provided on sisal; that on molasses will be made the same as on cottonseed oil, 3.5 cents; that on stock feed will be made the same as on grain and grain products, 3.5 cents; that on wood pulp will be made 3.5 cents; and that on pyrites will be made the same as on fertilizer material, 3.5 cents. No good reason is shown why the charge on cotton seed should exceed that on cottonseed products.

The proposed charges at New Orleans are in general the same in cents per 100 pounds as those for corresponding services at Gulf and south Atlantic ports east of New Orleans to and including Norfolk,¹ among which Mobile will be referred to as typical. The charges effective at these ports are published in Glenn's tariff I. C. C. No. A-272, effective January 10, 1921, which we declined to suspend. They are stated separately as handling and wharfage charges but cover the same kind and aggregate of services as the single handling charge at New Orleans. The latter assertion is not disputed by the protestants, although they contend that now for the first time a wharfage charge is being included in the charge for handling. The respondents assert, on the other hand, that a wharfage charge has always been included in the handling charge and that it was not published separately because the franchise under which the Illinois Central's Stuyvesant pier was built prohibited any wharfage charge against the receiving or discharging ship, and it was desired to avoid even an appearance of violation of that franchise by publishing separately a wharfage charge against the freight, although that charge is different from a wharfage charge against the ship. But regardless of the terminology of publication the protestants concede that the proposed charges at New Orleans under the Emerson tariff are, generally speaking, the same in amount for similar aggregate services, though published as a single handling charge, as the combined handling and wharfage charges of the carriers at Mobile and the other ports named under the Glenn tariff.

It may be stated in this general connection that even at Mobile there was, prior to the Glenn tariff, no uniformity in the manner of publication. The Southern published the charge covering both handling and wharfage as a single handling charge, while the Mobile & Ohio published the same aggregate amount as a handling and wharf-

¹ Except Gulfport, Miss. The respondents state that charges corresponding to those here proposed at New Orleans are to be published at Gulfport.

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age charge. The Louisville & Nashville also published a combined handling and wharfage charge, which, incidentally, was higher than that of the Southern and the Mobile & Ohio. The charges of all these carriers at Mobile are now the same under the Glenn tariff.

In addition to the equalization of charges as between New Orleans and the other Gulf and south Atlantic ports named that would result from the proposed charges becoming effective at New Orleans, the respondents allege that the cost of the service is greater than the revenue received. There has been no general revision of these charges since 1902, and the changes made in individual charges from time to time have represented on the whole reductions rather than increases. An exhibit shows that on export traffic since 1911 the changes have consisted of 2 increases and 19 reductions. Since 1902 the wages of freight handlers have increased from 16 cents to 55 cents an hour, a large part of the increase having been made since 1918. In the spring of 1919 the 10-hour day was replaced by an 8-hour day, with time-and-a-half pay for overtime. For the year ending October 31, 1920, the cost per ton of handling freight over the Stuyvesant pier of the Illinois Central is shown to have been 88.8 cents on lumber, \$1.044 on iron and steel, 58.2 cents on cottonseed products, and 83.2 cents on fertilizer materials, compared with the proposed charges of 80 cents on lumber, 70 cents on iron and steel, 50 cents on cottonseed products, and 70 cents on fertilizer materials. On all freight the average cost of handling and rehandling, which latter is necessary in some instances, is said to have been approximately 87 cents. These figures do not provide for interest on investment or other overhead expense, but include only wage expense. The Stuyvesant pier of the Illinois Central, 4,800 feet long, 150 feet wide, and shed-covered, is said to represent an investment of approximately \$3,000,000. The cost of handling all freight over the Westwego pier of the Missouri Pacific and the Texas & Pacific, on the west side of the Mississippi, for the six months ending October 31, 1920, is shown to have been 88.1 cents. The wage scale for freight handlers over the respondents' piers, which is reflected in the foregoing figures, is fixed by the Railroad Labor Board.

The proposed charges at New Orleans are shown to compare favorably with the charges for similar services at Texas ports. For example, the proposed charge per 100 pounds for handling lumber at New Orleans ranges from 4 cents to 5 cents. For a similar aggregate service at Galveston the aggregate charge of the Galveston Wharf Company is 4.99 cents. The proposed charges are also shown to compare favorably with the charges of private warehousemen at New Orleans and Mobile for the transfer of freight between the ship or the car and their warehouses.

These handling charges were not increased under general order No. 28 or by *Increased Rates, 1920*, 58 I. C. C., 220. The Director General made a general investigation of the handling charges at all south Atlantic and Gulf ports from Norfolk, Va., to New Orleans, inclusive, but had not sufficient time between the completion of the investigation in December, 1919, and the termination of federal control on February 29, 1920, within which to effectuate the revision which he thought ought to be made, and which he recommended to the carriers to make later. The charges under suspension are higher than those recommended by the Director General, on account of substantial increases in the cost of handling since April, 1918, upon which date labor costs under his proposal were predicated. For example, the wages of freight handlers have increased from a range of 30 cents to 43 cents an hour at that time to 55 cents an hour at the present time.

The protestants concede that the present charges as a whole are below the cost of the service to the carriers and disagree only as to the amount of the increase. They compare the proposed charges with the scale of lower charges made by contractors over the public piers at New Orleans, and contend that the probability of a decline in wages and an increase in labor efficiency within a short time should argue for an increase smaller than that proposed. These private contractors perform the handling service for the respondents on freight handled over the public piers. They pay the same wage scale per hour as the respondents do at their own piers, but they have the advantage over the respondents of being able in some instances to sublet the handling work on a piece basis, which results in greater efficiency and smaller cost. These lower contract rates are available to the protestants, as well as to the respondents and the shipping public generally, in respect of freight handled over the public piers.

The protestants state that Louisville & Nashville tariff I. C. C. No. A-14,000, second revised page 356, under suspension in this proceeding, provides for the discontinuance of the absorption of charges at New Orleans. None of the other respondents proposes any change in its absorption practices. No justification on the part of the Louisville & Nashville was offered, and representatives of respondents did not appear to be aware of such contemplated action. The discontinuance of this absorption by the Louisville & Nashville at New Orleans has not been justified upon this record.

Upon consideration of all the facts we find that, except the cancellation of the absorption of charges at New Orleans above referred to, and the charges on hemp, molasses, stock feed, pyrites, wood pulp, and cotton seed, the proposed charges have been justified. Schedules establishing the charges herein found reasonable, restoring the ab-

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sorption provisions of the Louisville & Nashville now in effect, and modifying schedules under suspension to the extent necessary to conform to the conclusions herein may be filed on five days' notice, effective on or before June 3, 1921. Upon receipt of such schedules, the order of suspension will be vacated and the proceeding discontinued. Our action is without prejudice to our further consideration of these charges in the general investigation of handling charges at the ports, Docket No. 12681, which has been instituted.

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INVESTIGATION AND SUSPENSION DOCKET No. 1250.¹

DIVERSION AND RECONSIGNMENT RULES, REGULATIONS, AND CHARGES.

Submitted April 14, 1921. Decided April 18, 1921.

Proposed rules and charges governing diversion and reconsignment of fruits and vegetables found not justified. Respondents required to cancel the schedules under suspension. Certain rules governing diversion and reconsignment of other commodities found justified.

R. H. Widdicombe, Parker McCollester, O. W. Dynes, A. P. Humburg, C. O. P. Rausch, Henry Thurtell, H. G. Herbel, A. C. Fonda, C. E. Muller, and J. T. Johnson for respondents.

Butler, Lamb, Foster & Pope, by W. E. Lamb, R. D. Williams, and E. S. Ballard for California Fruit Growers' Exchange et al.; *R. C. Cummins and Field Sherman* for American Fruit & Vegetable Shippers' Association; *W. R. Scott* for Board of Trade of Kansas City, Mo.; *J. L. Bowlus* for Chamber of Commerce of Milwaukee, Wis.; *Ralph Merriam* for Old Ben Coal Corporation; *P. W. Coyle* for St. Louis Chamber of Commerce; *Edgar Watkins* and *T. D. Guthrie* for Southern Wholesale Grocers' Association et al.; *H. B. Hunter* for Stone Ordean Wells Company; *T. M. Hanrahan* and *Olifford Thorne* for American Independent Petroleum Association et al.; *R. M. Field* for American Feed Manufacturers' Association; *Leo E. Golden* for Burlington Shippers' Association et al.; *Ben Stone* for Illinois Concrete Aggregate Association; *C. S. Bather* for Rockford Manufacturers & Shippers' Association et al.; *Seth Mann* for San Francisco Chamber of Commerce et al.; *G. J. Bradley* for Merchants & Manufacturers' Association of Sacramento; *J. A. Steward* and *F. C. Fitegibbons* for Mutual Orange Distributors; *G. W. Elmore* for Associated Fruit Company of Chicago; *M. E. McKirahan* for California Fruit Distributors; *F. M. Hill* for Fresno Traffic Association; *H. L. F. Daspit* and *Carl Giessow* for Shreveport Chamber of Commerce, New Orleans Joint Traffic Bureau, Monroe, La., Chamber of Commerce, and Alexandria, La., Chamber of Commerce; *L. F. Micholet* for New Orleans Coffee Company, Limited; *Charles E. Bell* and *O. R. Marshall* for Chase & Company

¹ This report also embraces Investigation and Suspension Docket No. 1276, Diversion and Reconsignment Rules, Regulations, and Charges (2), and No. 10173, Reconsignment and Diversion Rules, 58 I. C. C., 568, reopened.

et al.; *J. H. Tench*, *J. E. Calkins*, *A. S. Wells*, and *N. A. Blitch* for Florida Railroad Commission; *A. M. Tadlock* for Jonesboro, Ark., Freight Bureau; *O. W. Tong* for Northern Potato Traffic Association; *C. M. Chaney* for American Cranberry Exchange; *J. C. Folger* for International Apple Shippers' Association; *W. A. Schumacher* for Fruit Dispatch Company; *E. D. Dow* for Florida Citrus Exchange; *J. F. Thomas* for Sawyer Thomas Company; and *F. B. Dow* for National League of Commission Merchants et al.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

In the *Reconsignment Case*, 47 I. C. C., 590, we gave detailed consideration to diversion and reconsignment rules, but the charges and regulations then approved did not apply to fresh or green fruits and vegetables, including potatoes, onions, fresh berries, and melons. As to those we observed: "The character of these commodities indicates the propriety of making them an exception to any general rule."

These commodities were the subject of special consideration in *Reconsignment and Diversion Rules*, 58 I. C. C., 568, wherein we approved, except as therein stated, uniform rules and charges proposed by the carriers throughout the country governing reconsignments of fruits and vegetables. Among these rules was one governing reconsignments of less-than-carload shipments, one of back-hauled shipments, and also one of shipments held on order-notify billing or placed for inspection, which applied on other commodities as well as on fruits and vegetables. All of the rules were additions to those which had theretofore been approved in the *Reconsignment Case*, *supra*, for general application on all commodities except fruits and vegetables, grain, and hay, hereinafter referred to as the general rules.

By schedules filed to take effect on various dates in December, 1920, and January, 1921, respondents herein proposed rules purporting to be responsive to our findings in *Reconsignment and Diversion Rules*, *supra*, and charges for the service increased as authorized in *Increased Rates*, 1920, 58 I. C. C., 220. Upon receipt of numerous protests to the general effect that the proposed rules were not uniform and contained indefinite and conflicting provisions, that certain of them were contrary to our findings in the reconsignment cases cited, and that certain others would be unreasonable, disrupt long-established practices and inflict great loss and inconvenience upon affected shippers and the general public, the operation of these schedules was suspended and Docket No. 10173, *Reconsignment and*
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Diversion Rules, supra, was reopened to make the record therein available in hearing and disposing of this proceeding.

Respondents announced at the outset of the hearing that they would not undertake to justify rules which were not in accord with our previous decisions; that they would consent to modifications which tended to reconcile conflicting provisions or to remove uncertainty as to the proper interpretation and application of any rule; and that with these exceptions they would rest their justification of the proposed rules upon the record in *Reconsignment and Diversion Rules, supra*. Protestants representing fruit and vegetable producers and shippers, principally those of California and Florida, offered considerable evidence in support of their objections to certain rules. Evidence was also offered in behalf of wholesale grocers, manufacturers of cotton, grain dealers, and others, respecting the application of reconsignment rules and charges to order-notify shipments held for surrender of the bills of lading and to shipments placed for inspection. Beyond showing certain important changes in transportation and commercial conditions and in the attitude of the parties, the record herein is largely cumulative of that in No. 10173.

In view of the increases that have been made in rates and refrigeration charges since *Reconsignment and Diversion Rules, supra*, was heard, and in view of present business conditions, protestants urged that it would be unreasonable and economically unsound now to impose any additional burdens upon the fruit and vegetable industry. These representations as well as the changed transportation outlook led respondents, after conference with protestants, to propose substantial modifications in the suspended rules governing reconsignments of fruits and vegetables, but neither the carriers on the one hand, nor the shippers on the other, were able to agree upon uniform rules. It appears, however, that the preponderant opinion among both carriers and shippers is that the rules now under suspension governing reconsignments of fruits and vegetables are inadvisable for application under present conditions.

In view of this situation those rules no longer make the same claim for our approval that attended their original presentation and further discussion of them is unnecessary. We find that such rules have not been justified and will proceed to consider the provisions and rules affecting commodities other than fruits and vegetables.

LESS-THAN-CARLOAD SHIPMENTS.

The rule governing reconsignments of less-than-carload shipments published in the suspended schedules was approved in *Reconsignment and Diversion Rules, supra*, and is not protested herein. We find that the rule has been justified.

THE EMBARGO RULE.

Certain of the schedules under suspension provide that orders for diversion or reconsignment of commodities other than perishable freight, coal, coke, or fuel oil will not be accepted to a station or a point of delivery against which an embargo was in force when the shipment left the point of origin. That condition was disapproved in the *Reconsignment Case, supra*, was found unreasonable in *Boston Chamber of Commerce v. Director General*, 59 I. C. C., 73, and is protested in this proceeding by grain dealers at St. Louis and Kansas City, Mo., and other points. Respondents offered no justification of it and stated that it would be withdrawn. We find that the provision has not been justified.

THE BACK-HAUL RULE.

Some of the schedules under suspension contain the following rule in regard to reconsignments involving back-hauls or out-of-line movements:

No back haul or out-of-line haul will be performed at the through rate in connection with these rules, except as expressly provided herein. Shipments diverted or reconsigned where back hauls or out-of-line hauls are involved, will be subject to the published rates to and from the points of diversion or reconsignment, plus a service charge of \$5 per car.

An identical rule was proposed but disapproved in *Reconsignment and Diversion Rules, supra*, wherein it was stated, page 573:

Shippers are entitled, under the act to regulate commerce, to use any through route available under the tariffs. If the tariffs are so worded that routes other than a direct route are possible, such routes should be available alike to all shippers whether availed of under a reconsignment order or upon original billing. The through rate applicable via such route should be assessed against all shipments of the same kind of freight regardless of whether the shipment traveled the particular route because of a reconsignment order or under original billing. The haul for which this rate is assessed in the one instance is identical with that in the other.

We find that the proposed rule in so far as it concerns reconsignment involving back hauls has been justified except that when such a shipment has not been placed for unloading at the reconsignment point the charge should be the through rate from point of origin to ultimate destination plus the published local or other rates applicable to the back-haul movement in both directions and the reconsignment charge.

We further find that the proposed rule in so far as it concerns out-of-line hauls where through rates apply from original point of origin to final destination via the reconsignment point has not been justified, and should be amended accordingly.

A majority of the suspended schedules contain a rule which conforms with our findings in that case and provides as follows:

(a) Before Placement: If a car is diverted, reconsigned, or reforwarded on orders placed with local freight agent or other designated officer before place

ment for unloading, through rate from original shipping point to final destination plus the published local rate (or back-haul rates, if any) to cover the back-haul service in each direction, plus reconsigning charge of \$7, but not in excess of full combination of local (not back-haul) rates to and from point of diversion or reconsignment plus diversion or reconsignment charge, will be assessed.

(b) After Placement: If a car has been placed for unloading at original billed destination and reforwarded therefrom without being unloaded, full tariff rate to and from point of diversion or reconsignment plus a diversion or reconsignment charge of \$7 per car, but not less than the through rate from original shipping point to final destination plus diversion or reconsigning charge, will be assessed.

The distinction made in the above-quoted rule between reconsignments before and after placement is in harmony with the general rules governing reconsignments of dead freight approved in *Reconsignment and Diversion Rules, supra*, but, in order to conform with changes in the general rule applying to reconsignments at intermediate points after placement, authorized in special permission No. 52373, reconsignments after placement on public delivery tracks of shipments which have not been accepted or unloaded by the consignee or owner should be excepted from the application of paragraph (b). There is no apparent reason why reconsignments of shipments where back hauls are involved should be distinguished from reconsignments of like shipments at intermediate points, except in the matter of additional charges for the out-of-line haul. We find that the rule has not been justified in so far as it fails to provide for the exception covering shipments placed on public delivery tracks.

THE "ORDER NOTIFY" RULE.

Rule 10 as published in the suspended schedules was as follows, being the same as was approved in *Reconsignment and Diversion Rules, supra*:

Order notify shipments and shipments placed for inspection: Shipments covered by "order" or "order notify" bills of lading, placed on hold track, awaiting surrender of bill of lading, or shipments which are placed for inspection of contents before delivery, and which necessitates subsequent movement of car to place of delivery, will be considered as reconsignments within the switching limits, and subject to the rules and charges provided in rule 8. Provided, that the surrender of the original bill of lading shall not be a condition precedent to the placement of the car or to the giving of the order designating where the car shall be placed for unloading, except that where place of delivery designated is other than the local team tracks original bills of lading must be surrendered, or indemnity bond executed in lieu thereof, or other satisfactory assurance given carrier.

Rule 8 referred to applies to reconsignments within switching limits at destination.

The protests against the above-quoted rule emanate principally from dealers in cotton, flour, and feed, and from wholesale grocers at southern points, and are to the same general effects as those considered in *Reconsignment and Diversion Rules, supra*. In behalf of these protestants it is urged that it is impracticable to give disposition orders prior to arrival because of the impossibility of accurately forecasting the time of arrival, uncertainty in many instances as to the identity of the delivering carrier, and the necessity of inspection prior to acceptance, a thing which can only be done after a shipment has arrived. The premature withdrawal of the bill of lading from the bank or the giving of an indemnity bond would, in most instances, entail a greater financial burden than the payment of reconsigning charges and hence the latter can not, in common practice, be avoided. It is also contended that the rule discriminates against consignees who take delivery of shipments on private sidings in favor of those accepting delivery on the carriers' public delivery tracks; that it would tend to congest the latter facilities, which already are overtaxed, or to convert traffic now moving in carloads into a less-than-carload business; and finally that the service is included in the rate.

In *Reconsignment and Diversion Rules, supra*, most of the contentions now made by protestants were fully considered and the rule was found justified principally upon the ground that it would apply to services substantially identical with those for which charges are provided under rule 8. It was said, however, that "order-notify billing, which is recognized as a commercial necessity, ought not to be used as a means of imposing additional burdens on consignors or consignees where no additional service or obligation is placed on the carrier." It is pertinent to inquire, therefore, whether the proposed rule contravenes that principle.

So long as the handling of order-notify shipments held for surrender of the bill of lading or of shipments placed for inspection is, to all practical intents and purposes, identical with that of other shipments held and reconsigned within switching limits before placement, dissimilarity of service can not be invoked to justify the application of different rules and charges. It is not even contended that the services described in rule 10 are not *additional* services or that the physical characteristics of the services differ essentially from reconsignment.

But considering the situation from the standpoint whether compensation for the additional service is already included in the rate, this distinction may be noted. An ordinary reconsignment within or beyond switching limits is not a necessary incident of transportation and only occurs on a minority of all shipments. On the other hand, the holding of order-notify shipments at destination for surrender of the

bill of lading before placement, properly is, always has been, and necessarily will continue to be, inseparable from the transportation of every shipment consigned to the shipper's order, except under the circumstances stated in the proviso, rule 10. Hence the contention that the service is included in the rate is more persuasive. The rate applicable, however, is the same as that provided on all like shipments, and therefore to accord to order-notify shippers a free transportation service that is not required by most others and that is so nearly akin to reconsignment, for which latter a charge is made, would be an undue preference to that particular class of shippers and traffic. The charge would only apply when the carriers have actually rendered a valuable and obligatory service at the request and for the benefit of the owner or consignee of the shipment. It can not well be argued, therefore, that the carriers are not entitled to reasonable compensation for the service.

The contention that the proposed rule would unjustly discriminate between shipments destined for delivery on private sidings and those for team-track delivery could only be sustained upon the theory that the service performed by the carrier and also its obligations, are substantially the same. It is probably true that when direct deliveries from trains or break-up yards to team tracks and to private sidings are contrasted with each other, the differences in service alone would not warrant the distinction, for minor differences in service as between places of delivery are disregarded at all terminals.

The fact that in a switching district all carload freight is not received or delivered at the same point and in the same manner presupposes variations in the cost of service and other minor differences incident to diverse circumstance and operating conditions. *Boardman Co. v. S. P. Co.*, 37 I. C. C., 81.

We also found in that case, as we have in several others, that the receipt or delivery of carload freight on private or industrial tracks is merely the equivalent of a similar service on team tracks. There are, however, certain fundamental differences in the carriers' legal rights and liabilities which they can not be required to disregard to the extent of making deliveries on private tracks without requiring surrender of the bill of lading or other adequate protection against losses for which such deliveries would render them liable. These differences, which are too well known to require discussion, necessitate, in turn, a different manner of handling such shipments when destined for delivery on private sidings from that employed on shipments for team-track delivery. A discrimination that is no more broad than is warranted by the dissimilarity in the circumstances and conditions can not be condemned as unlawful.

There is no escape from the conclusion that in general it would be proper, as proposed in rule 10, to make an extra charge for the
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additional service inherent in the classes of shipments described in the rule. And there is little to show that the rule would, even in exceptional cases, impose undue hardship upon shippers affected by it.

Protestants urge that unless the rule be eliminated it should be so modified that it will not apply on cotton in bales consigned to mills or apply in any case where the consignee having a private siding has entered into an agreement with the carrier that the placement of shipments thereon shall not be deemed placement for delivery or constitute waiver of any rights which the carrier would otherwise have had. It is asserted that cotton consigned to mills should be exempted because it is not the subject of theft, and because many of the mills are situated at nonagency points, remote from towns or cities, where there are no facilities for placing or holding shipments except on the consignee's plant tracks; and, further, because carriers have not in the past suffered, and would be unlikely in the future to suffer, any loss by placing such shipments on private tracks. Situations of that kind or others, if presenting a proper matter for such an agreement as protestants suggest, appear to be sufficiently provided for in the proposed rule which permits placement of order-notify shipments on private sidings when satisfactory assurance is given carriers. What would constitute "satisfactory assurance" would depend somewhat upon the circumstances in each particular case and must largely be left within the discretion of carriers to determine. No changes in the rule which would lessen the protection to the carriers it now affords should be required.

Protestants further suggest modifications that in general would require carriers to notify consignees of the time that shipments will arrive and of the name of the delivering carrier sufficiently in advance of arrival to enable them to obtain possession of the bill of lading and furnish disposition orders. Protestants propose that no reconsignment charges shall be assessed unless such notice has been given, or when the bill of lading is surrendered to the line designated prior to the stated time of arrival, or when inspection, if permissible, is requested within that time. The record does not show whether it would be practicable for carriers to give such notice. Manifestly it would not be in many cases. A practice of giving passing notices similar to that considered in *Detroit Coal Co. v. M. C. R. R. Co.* 46 I. C. C., 231; *Becker v. P. M. R. R. Co.*, 28 I. C. C., 645; and in the *Reconsignment Case*, *supra*, page 631, would benefit consignees of order-notify shipments who do not desire inspection, but it appears that such instances would be comparatively rare. No reason is perceived why order-notify shipments placed for inspection upon the request of consignees or in conformity with billing instructions,

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and which require a subsequent movement, should not be subject to the same rule and charges as "straight" consignments placed for inspection.

We find that the proposed rule has been justified.

An order will be entered requiring the respondents to cancel the schedules under suspension, without prejudice to the establishment of the rules governing reconsignments of commodities other than fruits and vegetables herein approved, at a date not earlier than April 1, 1922.

COMMISSIONER ESCH did not participate in the disposition of this case.

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No. 11559.

**HARLAN COUNTY COAL OPERATORS ASSOCIATION
ET AL.***v.***LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**

Submitted February 24, 1921. Decided April 9, 1921.

Rate of \$1.90 per net ton charged for the transportation of carloads of bituminous coal from mines in groups 1, 3, and 4 on the Louisville & Nashville Railroad, in Kentucky, to Toledo, Ohio, for transshipment by lake, on and after May 6, 1920, and as increased pursuant to *Increased Rates, 1920*, 58 I. C. C., 220, found not unreasonable. Reparation denied and complaint dismissed.

J. V. Norman and *G. F. Graham* for complainants.

Frank Lyon for Northwestern Coal Dock Operators Association, certain individual members thereof, and Interstate Coal & Dock Company, interveners.

W. A. Northcutt for Louisville & Nashville Railroad Company, defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS McCHORD, DANIELS, AND AITCHISON.

McCHORD, Commissioner:

This case was made the subject of a proposed report by the examiner, exceptions were filed by the Louisville & Nashville Railroad Company, hereinafter called defendant, and by the intervening Northwestern Coal Dock Operators Association and individual members, and upon the issue ultimately submitted for determination by us, as hereinafter defined, the parties concerned were heard in oral argument.

The complaint, filed June 21, 1920, assailed as unreasonable and unduly prejudicial the rate of \$1.90 per ton charged for the transportation, on and after May 6, 1920, of carloads of bituminous coal from complainants' mines in groups 1, 3, and 4 on defendant's line in Kentucky to Toledo, Ohio, for transshipment thence by lake. The relief prayed was a rate for the future not to exceed \$1.55 per ton. Individual members of the Northwestern Coal Dock Operators Association and the Interstate Coal & Dock Company, consignees of the shipments, having paid and borne the transportation charges,

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thereafter intervened and prayed for reparation on all shipments under the rate assailed and as increased in the meantime pursuant to *Increased Rates, 1920*, 58 I. C. C., 220. All rates mentioned are per ton of 2,000 pounds, in carloads.

The points of origin are within the so-called "inner crescent" group of mines, which also includes mines on the Chesapeake & Ohio, the Long Fork, and the Sandy Valley & Elkhorn railways in Kentucky and West Virginia. Unlike the lines last named, the defendant, operating in connection with the Baltimore & Ohio Railroad from Cincinnati, Ohio, had maintained but one rate from the inner crescent to Toledo; but in September, 1918, during the period of federal control, a rate of \$1.55 was made applicable over that route on what is denominated of record "lake cargo" coal—that is, coal to Toledo for transshipment thence by lake—a contemporaneous rate of \$1.90 applying on corresponding shipments for local delivery at Toledo. The respective rates were the same as those then applicable over the Chesapeake & Ohio and connections from inner crescent mines on lake-cargo and local shipments to Toledo. Effective May 6, 1920, federal control having terminated, defendant, apparently without consulting the Baltimore & Ohio, canceled the \$1.55 rate, the \$1.90 rate thereupon becoming applicable on all shipments to Toledo, whether lake cargo or local. The several rates of the lines engaged in the traffic subsequently were increased pursuant to *Increased Rates, 1920, supra*.

At the opening of the oral argument counsel for defendant announced that, in view of the increased development of coal on its line and the present rate situation, the appropriate lake-cargo rate would be restored, and this concession satisfied the demand of the complainants. Thereafter, effective March 23, 1921, the promised rate was established, being the former \$1.55 rate adjusted to the present increased basis from that district. This left for our consideration only the question of reparation to the interveners, the issue covered by the oral argument.

In the circumstances, and as there is no proof of damage to the interveners by reason of the alleged undue prejudice, if any, by which an award of reparation could be supported, the issue is narrowed to the question of the reasonableness of the rate assailed.

The interveners contend that the primary and real measure of a reasonable rate for the service rendered is what defendant has charged for the transportation of other coal between the same points; and this is resolved into a matter of the revenues accruing to defendant and its connection from the contrasted traffic. The evidence is that in train loads the coal reaches the Baltimore & Ohio break-up yard at Toledo, where it is classified, the lake-cargo coal moving

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thence about a mile to the docks of that carrier, whereas coal for local delivery is switched, in many cases over one and two additional lines, for distances from 1 to 12 miles, said to average 9 miles on 75 per cent of the coal. For this local switching the defendant and its connection absorb charges computed to run as high as \$16.50 per car, approximating 30 cents per ton, for delivery by the Toledo Terminal Railroad, and as high as \$19.60 per car, or about 40 cents per ton, for a two-line switching delivery. If the computations are accurate, the defendant and Baltimore & Ohio would receive, out of the \$1.90 local rate, but 5 cents more in the first case and 5 cents less in the second case than they would derive from the \$1.55 lake-cargo rate. Similarly, out of contemporaneous joint rates applicable via rail beyond Toledo, omitting details, the divisions available to the defendant and Baltimore & Ohio are shown as averaging \$1.485, or 6.5 cents less than on lake-cargo coal at \$1.55. A lower, and in some instances materially lower, rate of car detention on lake-cargo shipments than on local deliveries and shipments by rail beyond Toledo is also urged as supporting the demand for reparation.

In our view of the merits the evidence adduced on the other side need not be discussed. Interesting as is the disclosure of divisions accepted by defendant and its connection out of the contrasted rates, the fact remains that as applied to the lake-cargo traffic for the average distance of 430 miles the \$1.90 rate yielded the carriers 4.42 mills per ton-mile, as against 3.6 mills under the rate of \$1.55. By way of comparison, the contemporaneous \$1.55 rate from the inner crescent via the Chesapeake & Ohio and Hocking Valley railways, an average distance of 327.6 miles, yielded 4.7 mills, and via the Chesapeake & Ohio to Cincinnati and the Baltimore & Ohio beyond, 441.7 miles, it yielded 3.5 mills. While we commend the action of defendant in restoring the rate parity on lake-cargo coal from the inner crescent, we think the foregoing earnings are not consistent with a finding that the rate assailed was in fact unreasonable. This conclusion also embraces the challenged rate as increased pursuant to *Increased Rates, 1920, supra*. Reparation is therefore denied, and, as no order for the future is necessary, the complaint will be dismissed.

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INVESTIGATION AND SUSPENSION DOCKET No. 1288.
REGROUPING AND DESCRIPTION OF LUMBER
ARTICLES FROM PACIFIC COAST POINTS.

Submitted March 19, 1921. Decided April 18, 1921.

Proposed increased rates on cedar fence posts, in carloads, from points in Oregon to points in California, found not justified. Suspended schedules ordered canceled.

Alfred A. Hampson for respondents.

Eugene H. Beebe for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

AITCHISON, Commissioner:

By schedules filed to become effective January 26, 1921, respondents seek to amend their present schedules naming rates on cedar fence posts, in carloads, from points in Oregon to points in California. It having appeared from the protests of shippers that the practical effect of the proposal would be a substantial increase in rates, we suspended the operation of the schedules until May 26, 1921, and subsequently suspended their operation until June 25, 1921.

The rates in the tariff in question are divided into groups. The present schedules, so far as they are material, provide as follows:

Group "A" Lumber, viz: Cedar, Cypress, Fir, Hemlock, Larch, Pine, Redwood or Spruce (except manufactured products of lumber shown in Group B), Kindling Wood (in bundles or crates), Lath, Logs, Mining Timbers, Mine Wedges, Fence Posts and Railroad Ties, straight or mixed carloads.

Lumber, Cottonwood, Hardwood (except woods of value, viz: Cocobolo, Ebony, Lignum Vitae and Rosewood), straight or mixed carloads.

Group "D" Lumber, viz: Cypress, Fir, Hemlock and Spruce, also Lath, Mining Timbers, Mine Wedges, Fence Posts and Railroad Ties, straight or mixed carloads.

The proposed schedules provide:

Group "A" Lumber, except manufactured products of lumber shown in Group "B", Kindling Wood in bundles or crates, Lath, Logs, Mining Timbers, Mine Wedges, Fence Posts and Railroad Ties made from the following woods, viz: Cedar, Cypress, Fir, Hemlock, Larch, Pine, Redwood and Spruce, straight or mixed carloads.

Lumber, viz: Cottonwood or Hardwood, except woods of value, viz: Cocobolo, Ebony, Lignum Vitae and Rosewood, straight or mixed carloads.

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Group "D" *Lumber, Lath, Mining Timbers, Mine Wedges, Fence Posts and Railroad Ties, made from the following woods, viz: Cypress, Fir, Hemlock and Spruce, straight or mixed carloads.*

It is not clear from the present schedules whether cedar fence posts take group-A rates or group-D rates, and the purpose of the proposed schedules was to specifically provide that the former shall be charged. From Buxton, Oreg., a typical point of origin, to San Francisco, Calif., the group-A and group-D rates are 37.5 cents and 31.5 cents, respectively, and in general the group-A rates to the important destinations are 6 cents per 100 pounds higher than the group-D rates.

The group-A rates apply to forest products in general, while the group-D rates are intended only for cypress, fir, hemlock, and spruce to points, such as San Francisco Bay, where it is deemed advisable to meet coastwise steamship competition. Cedar is not produced in large quantities immediately on tidewater, and it does not ordinarily move by water. Respondents therefore regard the group-A rates as proper for cedar and resist the application of the group-D rates. Cedar lumber already is in group A, and the only question presented is whether cedar fence posts must take the same rates. Practically the only fence posts moved are of cedar, and they move only by rail.

Protestants challenge the propriety of charging the same rates on the cedar posts as on cedar lumber. The average carload weight of cedar posts is about 44,000 pounds, or several thousand pounds greater than that of cedar lumber, which is a more valuable commodity. Cedar fence posts can be loaded in any kind of equipment, whereas cedar lumber can not. Cedar fence posts are comparatively cheap, and according to an exhibit introduced by protestants, in 20 out of 34 shipments of such posts from Washington points to destinations in California, Nevada, and Arizona the freight charges exceeded the net amount received for the material.

Respondents voluntarily added fence posts and other low-grade forest products, such as lath, mining timbers, and mining wedges to the group-D provision about five years ago, and for several years, at least, raised no question about the application of the group-D rates. According to protestants, many overcharge claims have been settled on the basis of the group-D rates.

In all, or practically all, tariffs applying from the Pacific northwest, except the one involved in this case, the rates on cedar fence posts are the same as or lower than those on fir lumber.

Upon this record we find that respondents have not justified the proposed increased rates, and an order will be entered requiring the cancellation of the suspended schedules. Respondents should revise the present schedule so as to show clearly that group-D rates apply on cedar fence posts.

No. 11433.¹

MONSANTO CHEMICAL WORKS

v.

PENNSYLVANIA RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted December 18, 1920. Decided April 11, 1921.

Rates on imported nitrate of soda, in carloads, from New York, N. Y., and Baltimore, Md., to East St. Louis, Ill., found unreasonable. Reparation awarded.

Thomas Bond for complainant.

S. C. Matthews for Pennsylvania Railroad Company.

Alex. M. Bull for Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing chemicals at East St. Louis, Ill., by complaints filed April 26, 1920, as amended, alleges that the rates charged on 12 carloads of nitrate of soda, imported from Chile, shipped to East St. Louis, Ill., 5 in August, 1918, from Baltimore, Md., and 7 in September, 1918, from New York, N. Y., were unreasonable. Reparation only is asked. Rates will be stated in cents per 100 pounds.

The shipments from Baltimore, aggregating 406,129 pounds, moved over the Pennsylvania and the Pittsburgh, Cincinnati, Chicago & St. Louis. Freight charges of \$2,010.42 were collected at the applicable fifth-class rate of 49.5 cents. The shipments from New York, aggregating 546,340 pounds, moved over the New York Central and the Cleveland, Cincinnati, Chicago & St. Louis. Freight charges of \$2,868.31 were collected at the applicable fifth-class rate of 52.5 cents.

Prior to June 25, 1918, there was in effect an import commodity rate of 28 cents from New York to East St. Louis, with the usual differential adjustment from Baltimore of 3 cents under New York. On that date, pursuant to general order No. 28 of the Director

¹This report also embraces No. 11433 (Sub-No. 1), Same v. New York Central Railroad Company, Director General, as Agent, et al.

General of Railroads, these import rates were canceled. Fifth-class rates of 49.5 cents from Baltimore and 52.5 cents from New York thereupon became applicable. Domestic commodity rates to East St. Louis of 39 cents from Baltimore, effective December 24, 1918, and 42 cents from New York, effective February 17, 1919, were established. These rates were reduced to 35.5 and 38.5 cents, respectively, effective July 1, 1920.

In *General Chemical Co. v. Director General*, 57 I. C. C., 222, we had under consideration rates on imported nitrate of soda from New York, Philadelphia, Pa., and Baltimore to Hegewisch, Ill., a point in the immediate vicinity of Chicago which takes the New York-Chicago rates. We there found that the charges collected on shipments which moved during the latter part of 1918 were unreasonable to the extent that they exceeded 33 cents from New York and 3 cents less from Baltimore, the usual differential. East St. Louis takes 117 per cent of the New York-Chicago rates, and on this percentage the rates effective July 1, 1920, were established.

We find that the rates assailed were unreasonable to the extent that they exceeded 35.5 cents per 100 pounds from Baltimore and 38.5 cents per 100 pounds from New York; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable, and that it is entitled to reparation in the sum of \$1,333.55, with interest.

An appropriate order will be entered.

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No. 11544.

BARRETT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PHILADELPHIA &
READING RAILWAY COMPANY, ET AL.

Submitted December 31, 1920. Decided April 11, 1921.

Rate on coal tar, in carloads, from South Bethlehem, Pa., to Gray's Ferry, Philadelphia, Pa., found unreasonable during federal control. Reparation awarded.

J. L. Roberts for complainant.

William L. Kinter for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation distilling coal and oil tar at Gray's Ferry, Philadelphia, Pa., alleges that the rate of 15 cents charged on 58 carloads of coal tar shipped in August, September, and October, 1918, from South Bethlehem, Pa., to Gray's Ferry, was unreasonable to the extent that it exceeded 8 cents. It asks for reparation and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds.

The shipments, routed Pennsylvania delivery, moved intrastate in complainant's tank cars over the Philadelphia & Reading, hereinafter called the Reading, and the Pennsylvania. The applicable sixth-class rate of 15 cents was charged. There was contemporaneously in effect over the Reading a commodity rate of 8 cents in connection with Baltimore & Ohio delivery.

Prior and subsequent to the period covered by the complaint coal tar from South Bethlehem moved to the plant at Gray's Ferry over the Reading and the Baltimore & Ohio, which complainant states was and is the normal route. When these shipments were made the Reading had in effect an embargo on all carload freight to Philadelphia for Baltimore & Ohio delivery, except foodstuffs and perishable freight. Shipments were accepted only under permits granted by a freight traffic committee.

Complainant states that it was refused permits for Baltimore & Ohio delivery and had to specify Pennsylvania delivery in order to obtain the coal tar, and that the 8-cent rate should have applied in connection with the Pennsylvania, as the distances over both routes are practically the same. It contends that there was no valid reason for the Reading to maintain different rates, dependent upon which carrier made delivery.

Defendants submitted evidence to show that as to these particular shipments no applications for Baltimore & Ohio delivery were made by complainant. They insist that as there was one available route over which the 8-cent rate was applicable, there was no necessity for an additional route. This contention ignores the fact that when the shipments moved the Pennsylvania was under federal control and being operated as a part of a national system of transportation, and that the lines of defendants were, for then present purposes, a single line. *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 350; *Gill v. Director General*, 59 I. C. C., 119.

We find that the rate assailed was unreasonable to the extent that it exceeded 8 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

Our jurisdiction over intrastate rates, except under circumstances not here present, is limited to cases falling within the provisions of section 206 (c), transportation act, 1920. Therefore no order for the future will be entered.

61 I. C. C.

No. 11330.

MINNESOTA & ONTARIO PAPER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
CHICAGO TERMINAL RAILROAD COMPANY, ET AL.

Submitted December 8, 1920. Decided March 3, 1921.

Rates on salt cake, in carloads, from Newell, Pa., and Hegewisch and West Hammond, Ill., to International Falls, Minn., found to have been unreasonable. Reparation awarded.

William N. Webb for complainant.

A. H. Lossow for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing paper at International Falls, Minn., formerly the Minnesota & Ontario Power Company, alleges by complaint seasonably filed that the rates charged on 21 carloads of salt cake, in bulk, shipped from Newell, Pa., and Hegewisch and West Hammond, Ill., to International Falls between July 1, 1917, and May 3, 1918, were unreasonable to the extent that they exceeded rates subsequently established. The prayer is for reparation. Rates will be stated in cents per 100 pounds.

International Falls is 170 miles northwest of Duluth, Minn., and Hegewisch and West Hammond are Chicago, Ill., rate points. The shipments averaged 74,021 pounds and moved via Duluth, those from Newell via Chicago and Duluth. Charges were collected at the applicable combination rates of 50.2 cents from Newell, composed of a commodity rate of 29 cents to Duluth and the fifth-class rate of 21.2 cents beyond and 40.7 cents from Hegewisch and West Hammond composed of a commodity rate of 19.5 cents to Duluth and the fifth-class rate of 21.2 cents beyond. Effective February 11 and May 4, 1918, respectively, a joint commodity rate of 16 cents was established from Chicago rate points to International Falls over the two routes by which these shipments moved. As the contemporaneous rate from Newell to Chicago was 15 cents, the combination rate from Newell to International Falls became 31 cents.

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Salt cake, or sodium sulphate, is made by decomposing common salt with sulphuric acid, and is used in making paper pulp. It is usually shipped in box cars loaded to capacity, and at the time these shipments moved it was worth about \$27 per ton, f. o. b. Chicago. Rates on this commodity are usually grouped with numerous other paper-stock materials, some of which are of considerably greater value. Complainant opened its pulp mill in 1917, and asserts that the carriers had promised to publish a commodity rate some time before the shipments moved.

Complainant compares the 40.7-cent rate for the short-line distance of 638 miles from Chicago with other rates set out in the following table, showing ton-mile and car-mile earnings based on the average loading of the shipments here considered:

From—	To—	Distance.	Rate.	Ton-mile earnings.	Car-mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Hegewisch and West Hammond.	International Falls.....	¹ 638	40.7	12.76	47.23
Do.....	do.....	¹ 638	16	5.02	18.56
Chicago.....	Duluth and Barksdale.....	² 473.5	19.5	8.24	30.5
Do.....	Five Wisconsin points.....	² 262.6	12	9.14	33.83
Milwaukee.....	do.....	² 177.6	8	9.01	33.84
Barksdale.....	Chicago.....	479	10	4.18	15.45

¹ Short-line distance from Chicago.

² Average distance.

Defendants offered no evidence at the hearing, but it was stated by their counsel that the 16-cent rate was published because the former rates were believed to be out of line with those to Duluth and other points. Some of defendants had expressed a willingness to make reparation on our informal docket to the basis of the subsequently established rates.

The publication of the 16-cent rate made the rate to Duluth higher than to International Falls and created a departure from the long-and-short-haul provision of the fourth section, which was and is unauthorized, and therefore unlawful, and should be promptly corrected.

The fifth-class rate of 21.2 cents applicable beyond Duluth, 170 miles, yielded ton-mile earnings of nearly 25 mills, which were excessive as compared with the ton-mile earnings of 8.24 mills under the 19.5-cent rate for the average distance of 473.5 miles from Chicago to Duluth and Barksdale. A rate of 25 cents, or 5.5 cents over the rate to Duluth and Barksdale, would have yielded 7.84 mills per ton-mile and 29.02 cents per car-mile, which are slightly higher than the earnings under the 19.5-cent rate to Duluth.

We find that the rates assailed were unreasonable to the extent that they exceeded 25 cents per 100 pounds from Hegewisch and West Hammond to International Falls and 40 cents per 100 pounds from Newell to International Falls; that complainant under its former cor-

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porate name of Minnesota & Ontario Power Company made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 11445.

BERRY BROTHERS, INCORPORATED,
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted December 18, 1920. Decided April 11, 1921.

Rates applicable on wood alcohol, in tank-car loads, from Ashland, Wis., to Detroit, Mich., found not unreasonable. Complaint dismissed.

*Thomas B. Moore and Beaumont, Smith & Harris for complainant.
Robert H. Widdicombe and L. P. Day for defendants.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing varnishes and paints at Detroit, Mich., alleges by complaint seasonably filed that the rate of 43.5 cents demanded on wood alcohol, in tank-car loads, from Ashland, Wis., to Detroit, during 1917 and January, 1918, on which charges were collected at a rate of 24.7 cents, was unjust and unreasonable. We are asked to prescribe a reasonable rate for the future and to award reparation on one carload shipped in June, 1917, on which charges were paid at the rate assailed. Rates are stated in cents per 100 pounds and do not include the increases authorized in general order No. 28 of the Director General of Railroads, or the general increase authorized by us on July 29, 1920.

The Director General was not made a party defendant and was not represented at the hearing. The shipments made during federal control will therefore not be considered.

The shipments, which were in complainant's tank cars moved as routed by the shipper over the Chicago & North Western, hereinafter termed the North Western, to Saxon, Wis., the Duluth, South Shore & Atlantic to Mackinaw City, Mich., and the Michigan Central beyond, about 633 miles. Complainant's plant is located on the line of the Michigan Central. Charges were paid at a rate of 24.7 cents. Subsequently defendants claimed that the applicable rate was 43.5 cents and collected the difference on one carload weighing 56,000 pounds. Defendants admit that part of this is an overcharge.

Prior to September 20, 1917, the lowest combination rate over the route of movement was 38.4 cents, composed of a proportional rate of 20 cents to Mackinaw City, and the fifth-class rate of 18.4 cents beyond. On that date this combination was increased to 41 cents.

Complainant's main contention is that a joint commodity rate of 24.7 cents was applicable, as the item carrying that rate via Mackinaw City contained no reference to any exception which would eliminate its application in connection with the North Western. Defendants contend that the combination rate applied because of a general exception in the tariff which stated specifically that no joint rates would apply in connection with the North Western via Mackinaw City and certain other points. They further contend that a tariff must be considered in its entirety and that any particular item is subject to all general rules restricting routing and application of rates. The item carrying the general exception did not require a reference thereto to make it applicable throughout the tariff.

Complainant further contends that if we find the joint rate not applicable the combination rate was unreasonable. Comparison is made with the joint rate of 24.7 cents concurred in by the North Western on shipments moving via Manitowoc or Milwaukee, Wis. An exhibit prepared by complainant shows the earnings per ton-mile and car-mile over all of the routes at the rate of 24.7 cents and at the rate of 43.5 cents via Mackinaw City. Relatively high earnings are shown under the 43.5-cent rate.

The North Western maintained two through routes from Ashland to Detroit over which the rate of 24.7 cents was maintained; one via Manitowoc, Wis., and the other via Milwaukee, Wis. Both are two-line hauls and are shorter than the three-line haul via Mackinaw City. The North Western has a haul of 287 miles by way of Manitowoc, as compared with 26.5 miles by the route of movement. It urges strongly that we have no authority under section 15 of the interstate commerce act to require it to short-haul itself without its consent.

Defendants can not be held responsible where the shipper routed the shipments and could have avoided the damage alleged by desig-

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nating a route over which the through rate applied. The existence of a lower rate over other routes does not of itself warrant a condemnation of the rate charged.

We find that the item carrying the through rate via Mackinaw City was limited by the general exception and was not applicable to the shipments as routed. We further find that the applicable rates were the lowest combinations in effect over the route of movement and that they were not and are not unreasonable.

The complaint will be dismissed.

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No. 8167.¹

THREE LAKES LUMBER COMPANY ET AL.

v.

WASHINGTON WESTERN RAILWAY COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted January 6, 1921 Decided April 5, 1921.

1. Upon further hearing, previous decision in 5th I. C. C., 42, modified.
2. Rates on lumber and forest products from points on the Washington Western Railway to interstate destinations found not to have been or to be unreasonable, but refusal of defendants to maintain joint rates on the coast-group basis from points on the Washington Western to interstate destinations, while contemporaneously maintaining rates on like traffic on the coast-group basis to the same destinations from points in the states of Washington and Oregon on their own branch lines, on their proprietary branch lines, or on their independent connections, found to result in undue prejudice. Undue prejudice ordered removed.
3. Complainants not shown to have been damaged by the undue prejudice; reparation denied.

Luther M. Walter and John S. Burchmore for complainants and Washington Western Railway Company.

D. F. Lyons, A. C. Spencer, and John F. Finerty for defendants except Washington Western Railway Company.

Joseph N. Teal for West Coast Lumbermen's Association, intervenor.

REPORT OF THE COMMISSION ON FURTHER HEARING.

DANIELS, *Commissioner*:

Exceptions were filed by the parties to the report proposed by the examiner and the case was orally argued before us.

The Washington Western Railway connects with the Northern Pacific Railway at Machias, Wash., and extends in a southeasterly direction about 11 miles to Woodruff, Wash., where it connects with the Great Northern Railway and also with the Chicago, Milwaukee & St. Paul Railway, hereinafter referred to as the St. Paul. The principal issues here presented, namely, whether the failure of defendants to maintain joint rates on the coast-group basis on lumber

¹ This report also embraces investigation and Suspension Docket No. 193, Joint Rates with the Washington Western Railway Company and No. 10816, Three Lakes Lumber Company et al. v. Director General, as Agent, Washington Western Railway Company, et al.

and forest products from points on the Washington Western to interstate destinations was or is unreasonable or unduly prejudicial, have been made the subject of three reports by this Commission.

In our original report, *Joint Rates with the Washington Western Ry.*, 27 I. C. C., 630, we sustained the action of the respondents in proposing to cancel joint rates on this traffic on the coast-group basis, which joint rates had recently been established in connection with the Great Northern and Northern Pacific railways. No such joint rates had been established over the Washington Western in connection with the St. Paul. We rested our decision largely upon the ground that the Washington Western was a plant facility of the Three Lakes Lumber Company, the proprietary company, whose mill is located about 4 miles south of Machias. We observed, however, that even if the Washington Western should be regarded on the record as a common carrier, it did not follow that the Three Lakes Lumber Company was entitled to the benefit of the group rates from its mill while its competitors located on the lines of other industrial railroads operated in connection with lumber mills were required to pay the group rates from the junctions with the trunk lines. The orders suspending the cancellation of the joint rates were vacated as of July 21, 1913. Subsequently, upon petition of the Washington Western, a further hearing was had upon the question of whether the statement in the original report to the effect that it was not the practice of the trunk lines to extend lumber rates to tap-line points in the state of Washington was correct; and also upon the question of what undue prejudice, if any, resulted from the refusal of the trunk lines to extend the junction-point rates to points on the Washington Western. As a result of this further hearing we issued our second report, 41 I. C. C., 649, in which we said:

The coast' rates on lumber which, for a short time, were published from points local to the Washington Western, apply generally from points west of the Cascade Mountains, lying between Vancouver, British Columbia, on the north through Washington and Oregon, to the California-Oregon state line, on the south. The Northern Pacific and the Great Northern do not serve all points in this blanket, but the Washington Western is well within the groups served by them.

The evidence now before us shows that within this general blanket the coast-group lumber rates apply from points on all main trunk lines, on proprietary branches of the trunk lines, and on connecting lines which are common carriers. Complainant contends that the Washington Western is the only common carrier within the coast-group territory from which the coast-group lumber rates do not apply. The history of the Washington Western, its physical situation and operations, are fully recited in the original report. Its character as a common carrier is not now denied by respondents. The present record shows that the coast-group rates are applied from points on two other connecting roads controlled and operated by lumber interests.

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In conformity with the principles announced by the Supreme Court of the United States in the *Tap Line Cases*, 234 U. S., 1, we held that the Washington Western was a common carrier both of proprietary and nonproprietary traffic, and upon consideration of the whole record found that respondents' denial of joint through rates on lumber and forest products originating at points on the Washington Western while maintaining such rates from points on their proprietary branches, from points on the lines of other common carriers, and from points on the Columbia River in connection with boat lines,¹ subjected the Washington Western and shippers on its line to undue prejudice and disadvantage which the respondents were directed by order to remove. Prior to the effective date of that order the Great Northern and Northern Pacific, which had assumed the burden of defending respondents' action, filed a petition in which they asked that we approve certain proposed changes in rates as being in sufficient compliance with our order. The proceeding was thereupon reopened for further argument and the effective date of the order was indefinitely postponed pending such argument.

In the interim, on July 19, 1915, a complaint, No. 8167, had been filed by the Three Lakes Lumber Company and other shippers located on the Washington Western in which the only carriers named as defendants were the Washington Western, the Great Northern, the Northern Pacific, and the St. Paul. In this complaint it was alleged that the failure of the defendants and their connections to publish and maintain subsequent to July 21, 1913, joint rates on the coast-group basis for the transportation of lumber and forest products from points on the Washington Western to interstate destinations resulted in the application of combination rates made up of the local rate of the Washington Western and the coast-group rates published by its connections; that such combination rates were unjust and unreasonable; and that the maintenance by said defendants of joint rates on the coast-group basis from other points in the coast group at which competitors of complainants were located subjected complainants to undue prejudice. The propriety of the extent to which the main-line points were blanketed was not questioned, the discrimination alleged being that the three trunk line defendants entered into joint rates on the coast-group basis from competing shipping points on connecting lines while refusing to enter into like joint rates with the Washington Western. Complainants asked for the establishment of joint rates on the coast-group

¹ At that time the Great Northern and Northern Pacific thus extended the coast-group rates on shingles and certain other lumber articles in packages suitable for transportation by water, but not on lumber, received from the boat lines at Kalama, Wash., but this arrangement has since been canceled.

basis from points on the Washington Western to interstate destinations, and for reparation on shipments moving subsequent to July 21, 1913, the date on which the joint rates were canceled in connection with the Great Northern and Northern Pacific. Later the Director General of Railroads was also made a party defendant.

The questions presented by the reargument in Investigation and Suspension Docket No. 193 and the issues raised by the complaint in No. 8167 were disposed of in a third report, *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 52 I. C. C., 42. We there found that the proposals submitted by the Northern Pacific and Great Northern would effect only a partial removal of the discrimination condemned in our second report; that as it was proposed to continue the coast-group rates from points on the respondents' branch lines, from points on their respective proprietary lines, and from points on the lines of other common carriers, those points would enjoy a preference which we had held to be unlawful. We further found that the rates on lumber from points on the Washington Western to interstate destinations on the lines of defendants in No. 8167 were and since July 21, 1913, had been unreasonable and unduly prejudicial to the extent that they exceeded the coast-group basis of rates contemporaneously applicable from points on the defendants' proprietary lines, from points on independent branch lines, and from points on the lines of other common carriers in that group. We prescribed that relationship of rates for the future, and found that complainants were entitled to reparation. No final order of reparation, however, has been entered. The proceedings in Investigation and Suspension Docket No. 193 were thereupon discontinued.

After certain other proceedings, which it is unnecessary to recite here, were had, the Three Lakes Lumber Company and other shippers complainant in No. 8167 filed an additional complaint, No. 10816, naming as defendants the Director General and numerous carriers all of whom were respondents in Investigation and Suspension Docket No. 193. In this complaint it is alleged that our order of January 7, 1919, in No. 8167 was observed by the publication of the coast-group rates to stations on the Great Northern, Northern Pacific, and St. Paul only, whereas, it is contended, the order contemplated the establishment of, and that defendants should be required to establish, the coast-group basis from Washington Western stations to all points to which the coast-group rates generally apply. Reparation also was asked.

Upon petition, filed November 5, 1919, by the Director General in his own behalf and on behalf of the Great Northern, Northern Pacific, and St. Paul, Investigation and Suspension Docket No. 193 and No. 8167 were reopened and, together with No. 10816, were

assigned for further hearing, as a result of which the entire proceedings are now before us for consideration. Certain additional shippers located on or near the Washington Western and shipping over its rails were permitted to intervene, adopting the allegations of the complaints in No. 8167 and No. 10816, and are hereinafter referred to also as complainants. The West Coast Lumbermen's Association also intervened on behalf of complainants. It is opposed to any finding which might result in disturbing or limiting the present rate structure with respect to the application of the coast-group rates to points on defendants' branch lines or independent connections.

Defendants contend that our order requiring the maintenance of coast-group rates from points on the Washington Western was the result of several fundamental errors, the first being that we were in error in finding that the trunk lines in the coast group applied the coast-group rates generally from points on their connections; and that we also erred in finding that the Washington Western was the only common carrier within the coast group from which the blanket rates were not applied. It does not appear that our findings were as broad as is asserted by defendants. While it is stated in those decisions that complainants asserted that the Washington Western was the only common carrier in the state of Washington that did not carry the coast-group rates from points on its line, no specific finding to that effect was made by us in these cases. In our third report we referred to the contention of respondents that the blanket rates were confined to points on the trunk lines and their proprietary lines and to points on certain independent lines to which the trunk lines were forced by competition to extend the group rates. However, defendants now urge the facts to be that the trunk lines in the coast group do not extend the coast-group rates to any of their connections except where compelled by competition; that, instead of the Washington Western being the only common carrier within the coast group to which the blanket rates are not voluntarily extended, it is, by reason of our order, the sole common carrier to which the blanket rates are extended in the absence of compelling competition.

The evidence now before us in the form of exhibits filed by defendants shows that there are within the coast group, and connecting with the trunk lines, some 24 short-line railroads which claim to be common carriers, and file tariffs with this Commission or with the Washington Public Service Commission, or with both, but which are not accorded joint rates on the coast-group basis. Along these roads, which range in length from 1.5 to 37 miles, there is an available supply of standing timber, and in general there are lumber mills in actual operation or available mill sites. At least six of them have made applications to the carriers for joint rates on the coast-group

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basis. These applications have been denied by the trunk lines. Of these short lines 11 connect with one or more of the trunk lines connecting with the Washington Western, and four others connect with the Spokane, Portland & Seattle Railway, which is controlled jointly by the Great Northern and Northern Pacific. It is insisted by defendants that generally these short lines are entitled to participate in joint through rates on the coast-group basis to the same extent as the Washington Western. Defendants also submit a list of over 100 other short-line railroads connecting with the trunk lines within the coast group to which the blanket rates are not extended, many of which roads compare favorably with the Washington Western in length, construction, and equipment. About 30 of these roads, while not claiming to be common carriers, handle some commercial traffic in addition to proprietary traffic and the remainder handle proprietary traffic only, including forest products and logs, or logs only. Defendants urge that many of these roads, if they are not in fact common carriers, can readily acquire that status.

The record now shows that aside from the Washington Western, and with one other exception hereinafter referred to, the only independent short-line railroads within the coast group which are accorded the blanket rates are the British Columbia Electric Railway, 181 miles; the Pacific Coast Railroad, 57 miles; the Pacific Northwest Traction Company, Northern division, 36 miles; the Pacific Northwest Traction Company, Southern division, 25 miles; and, as to certain points, the Portland Railway, Light & Power Company. Defendants contend that the extension of the blanket rates to points on these five lines is justified by competition, and that the same character of competition does not exist with respect to points on the Washington Western. Without detailing the evidence as to the circumstances surrounding the extension of the coast-group rates to points on these lines, it is sufficient for the purposes of this report to state that it tends generally to support defendants' contention that, with the single exception noted, the trunk lines have not extended the blanket rates to independent short-line connections except where one trunk line, in order to obtain a share of the traffic which would otherwise move at the blanket rates over another trunk line, has applied the blanket rates in connection with an independent line through which alone it can reach a point served by the other trunk line. Defendants insist that competition of this character does not exist in connection with the Washington Western; that Three Lakes, not being located on any trunk line but being a local point on the Washington Western, there is no object in either the Northern Pacific or Great Northern applying the blanket rates from that point, for, disregarding the fact that the local rate of the Washington Western is

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0.5 cent less to Machias on the Northern Pacific than to Woodruff on the Great Northern, the only effect of so doing would be to restore the original equality of the trunk lines with respect to that traffic.

But the Washington Western, forming as it does a connecting link between the Northern Pacific on the one hand, and the Great Northern and St. Paul, on the other hand, occupies the same relative situation physically with respect to the trunk lines as do the five other independent lines from points on which the coast-group rates are applied. Whether the rates from points on the Washington Western are unduly prejudicial is not controlled by whether or not a mill is located at the junction point. Shippers at intermediate points on the aforesaid five independent connections enjoy the blanket rate, which is denied to shippers at intermediate points on the Washington Western. The inhibition of section 3 of the interstate commerce act against undue prejudice applies to localities as well as to shippers at those localities. A shipper who contemplates locating a mill at Machias, for example, has a right to rely upon an analogous basis of rates being published in defendants' tariffs in determining the advantages or disadvantages of locating at that point. In each of the situations which defendants attempt to distinguish, the coast-group rates apply from the junction point of the other trunk line with the independent connection. In the one case one trunk line finds it to its advantage to meet the rates of the competing trunk line, and in doing so applies the coast-group rates to intermediate points on the independent connection; in the other case, it finds it to its advantage not to extend the blanket rates to the junction point of the independent connection with the competing trunk line, and by failing so to do would compel shippers at Three Lakes and other points on the Washington Western to pay higher rates than are accorded by it to competing shippers similarly located on similarly situated independent connections.

The single exception referred to above, where the coast-group rates are applied from points on an independent short line which connects with one trunk line, but is not reached by any other trunk line, is the Port Townsend & Puget Sound Railway. This short line has two connections with the St. Paul, one at Discovery Junction, Wash., and the other at Port Townsend, Wash., its northern terminus, to which point the St. Paul operates a car ferry from Seattle. The coast-group rates apply also from points on the Hartford Eastern Railroad, a proprietary branch line of the Northern Pacific and connecting only with the latter carrier. The situation with respect to the Hartford Eastern has been described in previous reports. This line is the so-called Monte Cristo branch of the Northern Pacific, extending from Hartford, Wash., eastward to Monte Cristo, Wash., 42 miles, Hartford being about 8 miles from Machias,

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the northern terminus of the Washington Western. This branch line is not operated by the Northern Pacific, but is leased by it to a lumber company which operates it as the Hartford Eastern Railroad, and receives from the Northern Pacific a division of the joint rates on the coast-group basis. The Northern Pacific has previously offered, and now offers, to cancel this contract with the Hartford Eastern and to operate the line as its own branch line. It proposes, however, to continue the coast-group basis of rates from points on this branch line in accordance with the general policy of the trunk lines of applying the coast-group rates from all points on their own branch lines.

Defendants contend that we also erred in holding that the trunk lines were bound to apply the blanket rates from points on the Washington Western because they applied such rates from points on their own branch lines and subsidiaries.

Within the coast group the Northern Pacific owns and operates about 10 branch lines, all of which are located in the state of Washington and take the coast-group rates. Among these branch lines are the following, with mileages shown:

Bellingham branch; Wickersham to Bellingham.....	23 miles.
Darrington branch; Arlington to Darrington.....	28 miles.
North Bend branch; Woodinville to Sallal.....	38 miles.
Kerriston branch; Kanaskat to Kerriston.....	16 miles.
Gray's Harbor branch; Gate to Bay City.....	61 miles.
Gray's Harbor branch; Gate to Moclips.....	72 miles.
South Bend branch; Chehalis to South Bend.....	57 miles.
Yacolt branch; Vancouver Junction to Yacolt.....	27 miles.

The other branches range in length from about 8 miles to 10 miles. The Gray's Harbor and South Bend branches extend from the main line in a westerly direction to the Pacific coast.

The only important branch of the Great Northern in the coast group is the Anacortes-Rockport branch. This branch, from points on which the coast-group rates apply, extends from the main line at Burlington, Wash., in a westerly direction to Anacortes on Puget Sound, 16 miles, and in an easterly direction to Rockport, Wash., 37 miles from Burlington. It crosses the main line of the Northern Pacific at Sedro Woolley, Wash., about 5 miles east of Burlington.

The St. Paul applies the coast-group rates from points on its National Park branch, formerly the Tacoma Eastern Railroad, extending from Tacoma, Wash., in a southerly direction to Morton, Wash., a distance of 67 miles. That portion of this branch from Tacoma to Salsich Junction, Wash., 11 miles south of Tacoma, forms part of through routes of the St. Paul to the Pacific coast. The St. Paul also applies the coast-group rates on its Enumclaw branch, extending 18 miles from the main line at Bagley Junction, Wash.,

to Enumclaw, Wash., which is served also by the Northern Pacific, and intersecting the main line of the Northern Pacific at Palmer, Wash., 7 miles south of Bagley Junction; and from main-line and branch-line points on its Bellingham division, extending from Bellingham, Wash., which is also served by the Northern Pacific and Great Northern, to Glacier, Wash., and intersecting the main line of the Northern Pacific at Sumas, Wash., 22 miles west of Glacier.

It is, and long has been, the general policy of the principal defendants, the Great Northern, Northern Pacific, and St. Paul, and in fact of the trunk line carriers generally, to apply the coast-group rates from all points on their own branch lines within the extensive coast group without regard to the length of such branch lines. With respect to the branch lines extending in a westerly direction to the Pacific coast, defendants assert that the application of the coast-group basis to points on these branches is due to the fact that originally it was the policy of each transcontinental line to apply the coast-group rates from all stations they reached on the coast. From points on certain of defendants' branch lines the rates are influenced by the fact that the branch line is intersected by a competing trunk line resulting in a competitive condition similar to that which exists in the case of the five independent lines above referred to, but, as has been shown, this competitive situation can not be distinguished in principle from that which obtains by reason of the location of the Washington Western with respect to competing trunk lines.

Both on the ground of physical identity of situation with the five independent connections accorded the coast-group rate, and on the ground of the relative measure of service performed over their own or proprietary branches, in certain cases exceeding the haul over the Washington Western, we find undue prejudice in the denial of the coast-group rate to shippers on the Washington Western while contemporaneously according it to either the independent connections or proprietary branches similarly circumstanced as the Washington Western.

The cancellation of the joint rates by the Great Northern and Northern Pacific in July, 1913, resulted in increased rates subsequent to January 1, 1910, and the burden was therefore upon those defendants to justify them. No such burden attached, however, to the St. Paul, which did not establish the joint rates until required to do so by our order in No. 8167. It should also be observed that the Great Northern and Northern Pacific, in canceling the joint rates which had been in effect but a short time, were merely restoring the basis of rates which, prior to the publication of the joint rates, had been in effect since the incorporation of the Washington Western as a railroad company in August, 1912, and which in fact was the same

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basis as was in effect in January, 1910, when the mill and railroad property of the Three Lakes Lumber Company were not separately incorporated.

In the so-called *Northwest Lumber Cases*, 14 I. C. C., 1, 23, 41, 51, decided June 2, 1908, we prescribed certain rates as reasonable for the transportation of lumber and its products from the northwest territory to eastern destinations. The rates thus prescribed were applied by the carriers not only from points on main lines in that territory but also from points on branch lines and on certain, but not all, independent connections. However, those cases did not involve any question of the application of the group rates from points on short-line railroads of the character of the Washington Western, but the rates were prescribed on the assumption that the then existing adjustment with respect to the extent to which the group rates had been applied by the carriers was satisfactory and was to be continued in effect, and we specifically referred to the fact that some points, located in most cases on small roads or branch lines, took differentials over the group rates. It is not contended that the coast-group rates applying from the junction points with the Washington Western, although they applied and apply also from main-line points much farther west, or that the local rates of the Washington Western were or are unreasonable, and aside from the fact that a joint through rate is frequently lower than a combination of intermediate rates there is nothing in the record to suggest that the combination rates, to the extent that they applied or apply, were or are intrinsically unreasonable. There is no contention on the part of complainants that the group rates were fixed in contemplation of their extension at that time to roads of the character of the Washington Western or in anticipation of such an extension in the future. It is clear that such roads were not considered by us in fixing the measure of the coast-group rates and it was so conceded by complainants on argument. In fact, up to the time of our first decision in this proceeding and the decision of the Supreme Court in the *Tap Line Cases*, *supra*, roads of this character were not even regarded by us as common carriers.

In *Willamette Valley Lumbermen's Asso. v. S. P. Co.*, 51 I. C. C., 250, we found that the rates on lumber from Willamette Valley points, which rates prior to June 25, 1918, exceeded the coast-group rates by from 4 to 13 cents per 100 pounds, being made on the Portland, Oreg., combination, were not unreasonable *per se*. As shown by our report in that case, comparisons submitted by complainant therein disclosed that the ton-mile earnings on the traffic from the Willamette Valley were invariably higher from 10 to 25 per cent than on traffic from western Washington. The following table compares the earnings

under the rates found reasonable in that case from Springfield, Oreg., a representative point in the Willamette Valley, to representative points of destination with the earnings under the combination rates assailed on lumber, other than cedar, from Three Lakes to St. Paul, Minn., all of the rates shown being those in effect prior to June 25, 1918, and being stated in cents per 100 pounds:

	Railroad.	Dis- tance.	Combi- nation rates as- sailed.	Excess over coast- group rate.	Ton-mile earnings.	Car-mile earnings. ¹
		Miles.	Cents.	Cents.	Miles.	Cents.
Springfield, Oreg., to—						
Billings, Mont.	Northern Pacific.....	1,119	40	11	8.2	23.94
Fargo, N. Dak.	Great Northern.....	1,700	41	11	6	17.40
St. Paul, Minn.	St. Paul.....	1,977	56	11	5.7	16.43
Three Lakes, Wash., to—						
St. Paul, Minn.	Northern Pacific.....	1,940	48	3	4.9	14.35
Do.	Great Northern.....	1,736	48.5	3.5	5.5	16.20
Do.	St. Paul.....	1,778	48.5	3.5	5.5	15.55

¹ Based on load of 55,000 pounds.

As stated, within this extensive coast group there are numerous roads of a character similar to the Washington Western, many of which are recognized as common carriers. The defendants, with one remaining exception, have consistently declined to extend the coast-group rates to these independent short lines except where a competitive situation existed. To hold that the coast-group basis of rates fixed in the *Northwest Lumber Cases*, *supra*, should have been applied from points on these roads as a matter of intrinsic reasonableness if and whenever they had acquired a common-carrier status is to say that the revenues of the carriers should have been progressively depleted as these lines acquired that status or were extended farther and farther to reach new timber.

While the action of the defendants in No. 8167, following our order of January 7, 1919, in that case, in restricting the application of the coast-group rates from Washington Western stations to destinations on the lines of the defendant carriers named therein, appears to have been in compliance with the strict letter of that order, defendants admit that it is the custom to extend the coast-group basis to connections of the three principal defendants and not to limit the same to their own local points, and they have suggested no reason, and none is apparent, why any different treatment should be accorded Washington Western points with respect to the territory of destination than is accorded other points enjoying the coast-group basis of rates.

Complainants at this hearing introduced no evidence as to damage. At the previous hearings witnesses for complainants testified that practically all of the lumber and forest products shipped by

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them were sold on the basis of the coast-group rates, the consignees paying all freight up to such basis, and that complainants were obliged to pay the additional charges representing the local rates of the Washington Western. There is no evidence, however, that complainants' competitors, located on branch lines of the trunk lines or on independent connections and enjoying the coast-group rates, fixed or controlled the price which complainants could obtain for their lumber, and as far as the record discloses complainants would have received the same price for their lumber had the rates of those competitors been the same as, or higher than, the rates from complainants' shipping points.

We find that the rates assailed were not and are not intrinsically unreasonable, but that it was, is, and for the future will be, unduly prejudicial for defendants in No. 8167 and No. 10816, in so far as they participate in the transportation, to fail or refuse to maintain joint rates on the coast-group basis on lumber and forest products, in carloads, from points on the Washington Western Railway to interstate destinations, while contemporaneously maintaining rates on like traffic on the coast-group basis to the same destinations from points in the states of Washington and Oregon on their own branch lines, on their proprietary branch lines, or on their independent connections. No damage is shown to have resulted to complainants from the undue prejudice, and reparation is denied. This finding modifies our previous decision in No. 8167, but our order therein of January 7, 1919, has now expired. Appropriate orders will be entered giving effect to our findings in No. 8167 and No. 10816 and discontinuing the proceeding in Investigation and Suspension Docket No. 193.

AITCHISON, Commissioner:

Concurring in the disposition of this case, I am of the opinion that the rates complained of have also been shown to be unreasonable, and that reparation should be awarded both on that account and because of damage resulting to complainant as a result of the undue prejudice found to exist.

HALL, Commissioner, dissenting in part:

I concur in the finding as to reasonableness, but not as to undue prejudice. The complaint should be dismissed. I am authorized to say that COMMISSIONER POTTER concurs in this expression of dissent.

COMMISSIONER ESCH did not participate in the disposition of this case.

No. 11171.

H. W. JOHNS-MANVILLE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, LOUISIANA SOUTHERN RAILWAY COMPANY, ET AL.

Submitted August 12, 1920. Decided March 3, 1921.

Rate on liquid asphalt, in tank cars, from Mereaux, La., to Milwaukee, Wis., found unreasonable. Reparation awarded.

L. J. Thomas for complainant.

A. P. Humburg and *E. A. Smith* for defendants.

John F. Finerty and *Alex. M. Bull* for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation manufacturing roofing materials at Milwaukee, Wis., by complaint filed January 22, 1920, alleges that the rates from Mereaux, La., to Milwaukee, established by the Director General of Railroads, applicable on liquid asphalt made from imported petroleum were and are unreasonable. We are asked to prescribe a reasonable rate for the future and to award reparation on all shipments which moved on and after June 25, 1918. Rates will be stated in cents per 100 pounds, and do not include the general increase authorized by us on July 29, 1920.

The shipments moved over defendants' lines and charges were collected at the applicable rates, which ranged from 31.5 cents to 26 cents, according to the dates of shipment.

Liquid asphalt is the residue of certain grades of crude petroleum after separation therefrom of the lighter oils by refining processes. It is produced principally at Mereaux, Destrehan, Good Hope, and Baton Rouge, La., Beaumont, Port Neches, Chaison, and Port Arthur, Tex., and on the Atlantic seaboard at or in the vicinity of New York, Philadelphia, Baltimore, and Newport News. That here considered was the product of crude petroleum imported from Mexico and refined at Mereaux. At the time of the hearing, March 31, 1920, liquid asphalt sold for 3.5 cents per gallon, f. o. b. refinery.

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but in 1918 the price was as high as 6 cents. This low-grade commodity is transported in tank cars furnished by the shipper. The average loading is about 38.5 tons, the movement is steady throughout the year, and loss-and-damage claims are unknown. Much of the asphalt shipped from the Atlantic ports is imported from Trinidad in solid form. Complainants used both liquid and solid asphalt, and from 1916 to 1918, inclusive, received an average of about 230 carloads annually of the liquid asphalt, all shipped from Mereaux. During 1919 it obtained its main supply from Baltimore, but received 92 carloads from Mereaux.

Mereaux is on the Louisiana Southern 8 miles east of New Orleans. Destrehan and Good Hope are on the Yazoo & Mississippi Valley about 16 miles west of New Orleans. Prior to August 1, 1915, an import commodity rate of 19 cents to Milwaukee was applicable on liquid asphalt from Mereaux, New Orleans, and other producing points in Louisiana. On that date it was reduced to 16 cents. This rate remained in effect until all import rates were canceled on June 25, 1918, under authority of general order No. 28 of the Director General, and the domestic rate of 23 cents from all these producing points except Mereaux was increased by 25 per cent to 29 cents. The domestic rate thus made applicable from Mereaux was 31.5 cents, composed of the local rate of 2.5 cents to New Orleans and the New Orleans rate of 29 cents beyond. On June 8, 1919, Mereaux was put on the New Orleans basis of 29 cents; and on September 25, 1919, the rate from all these Louisiana producing points was reduced to 26 cents.

The import rate to Milwaukee from Mereaux as originally established in 1908 was the same as from New Orleans and 1 cent higher than the rate from Newport News and Baltimore. After September 3, 1911, it was 1 cent less than the rates from Newport News and Baltimore until September 1, 1913, when it became the same and so continued until all import rates were canceled on June 25, 1918. It seems clear that this import rate of 16 cents was depressed to meet the competition of carriers serving the Atlantic seaboard. The rate of 26 cents from Mereaux was 1.5 cents higher than those from Baltimore and Newport News. The latter are the same as to Chicago, whereas on shipments from Mereaux 1.5 cents over Chicago is charged. Milwaukee is accorded Chicago rates on traffic from the east because of competition by across-lake routes.

Complainant contrasts the increase on asphalt with increases on other commodities, including mangrove bark, cocoa beans, pineapples, and sisal, which load less heavily than asphalt. The 26-cent rate on asphalt represents an increase of 63 per cent over the 16-cent rate in effect June 24, 1918, and yields considerably higher

earnings per car as compared with the increases of 43 per cent or less on the other commodities.

Complainant also compares the 26-cent rate to Milwaukee on asphalt from the four Louisiana producing points named with a 30.5-cent rate on refined petroleum products from and to the same points. The spread between the two rates prior to June 25, 1918, was 10 cents. The rate of 30.5 cents which then became effective on refined petroleum products was less than the rate of 31.5 cents applicable on liquid asphalt from Mereaux during the period from June 25, 1918, to June 7, 1919, inclusive, and the present spread of refined over heavy petroleum products is 4.5 cents.

The following table, compiled from defendants' exhibits, compares the 26-cent rate from Mereaux to Milwaukee with rates on asphalt from north Atlantic ports for substantially similar distances in a territory of greater traffic density:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
New Orleans, La.....	Milwaukee, Wis.....	997	26
Mereaux, La.....	do.....	1,005	26
New York, N. Y.....	do.....	981	27.5
Do.....	St. Louis, Mo.....	1,040	22
Philadelphia, Pa.....	Rock Island, Ill.....	1,058	22
Do.....	Springfield, Ill.....	998	29
Newport News, Va.....	Cairo, Ill.....	977	31
Do.....	Milwaukee, Wis.....	1,025	24.5
Baltimore, Md.....	Madison, Wis.....	1,070	32
Do.....	Milwaukee, Wis.....	852	24.5
	Cairo, Ill.....	922	30

Asphalt was grouped with other low-grade petroleum products, such as asphaltum, road oil, and fuel oil, in *Midcontinent Oil Rates*, 36 I. C. C., 109, and accorded rates 5 cents lower than the rates on refined products from the midcontinent refineries to Chicago and St. Louis. This finding was followed with respect to rates to Milwaukee in *Wadhams Oil Co. v. Director General*, 57 I. C. C., 597. Defendants refer to the following rates, among others, on these low-grade oils, as tending to show that the rates assailed were not unreasonable:

From—	To—	Distance.	Rate on fuel, gas, or crude oil.	Rate on road oil or asphaltum.
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Ardmore, Okla.....	St. Paul, Minn.....	940	40.5	30
Do.....	Chicago, Ill.....	923	29.5	31.5
Fort Worth, Tex.....	Sioux Falls, S. Dak.....	941	45.5	55
Do.....	Chicago, Ill.....	905	37	44
Shreveport, La.....	St. Paul, Minn.....	1,044	42.5	60

Defendants also contrast the rates assailed with rates on asphalt from Mack, Colo., an asphalt-producing point, to Milwaukee, Chicago, St. Louis, and other points, and with rates on fuel, gas, crude, and road oils from points in Oklahoma, Texas, and Louisiana to various destinations for comparable distances, showing substantially higher rates, distance considered, than the rates attacked.

The 31.5-cent rate produced car-mile earnings of 24 cents and ton-mile earnings of 6.3 mills. The car-mile earnings under the rate of 29 cents established June 8, 1919, were 22.2 cents.

We find that the rate applicable from June 25, 1918, to June 7, 1919, inclusive, was unreasonable to the extent that it exceeded 29 cents, but that the rates applicable on and after June 8, 1919, were not unreasonable; that complainant made shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it was damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 11801.
UNION BAG & PAPER CORPORATION
v.
DIRECTOR GENERAL, AS AGENT.

Submitted February 1, 1921. Decided April 13, 1921.

Demurrage charges on certain carloads of various commodities held short of destination under constructive placement found to have been unlawfully assessed to the extent indicated. Reparation awarded.

J. H. Fishback, T. M. Day, and Charles D. Drayton for complainant.

Lewis E. Carr and Royal McKenna for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, Commissioner:

Exceptions were filed by the parties to the report proposed by the examiner.

Complainant is a corporation manufacturing wood pulp and paper products, with mills at Hudson Falls and at Fenimore or Fenimore Siding, N. Y., on the south bank of the Hudson River opposite, and about 3 miles from, Hudson Falls. In its complaint, filed February 28, 1920, it alleges that demurrage charges collected by defendant for the detention in July, August, and September, 1918, of numerous carloads of pulp wood, wood pulp, and coal consigned for delivery on complainant's siding at Fenimore, but held short of destination under constructive placement, were unlawful, unjust, and unreasonable, in violation of the act to regulate commerce and section 10 of the federal control act. It asks an award of reparation approximating \$44,684.

Complainant's mills at Fenimore are reached by a spur track owned by it, which connects at Fenimore Junction, N. Y., with the South Glens Falls branch of the Delaware & Hudson Company, hereinafter called the defendant. The spur is about 9,500 feet in length, and complainant's Fenimore operation is located near the end thereof. The plant comprises buildings, railroad tracks, storage space, and other facilities. Several switch or auxiliary tracks, connecting with the main spur, serve complainant's mill and certain devices for unloading pulp wood called conveyors. Cars consigned for delivery on

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complainant's tracks are usually taken by defendant to the Fort Edward yards near Hudson Falls, and then moved to storage sidings near Fenimore Junction; from there they are delivered to complainant. Fenimore and Fenimore Junction are under the jurisdiction of the agent at Hudson Falls. During the period in question, due to alleged abnormal conditions in complainant's plant for a part of the time, and to unusually heavy shipments, defendant held many cars short of destination at sidings near Fenimore Junction, and at Fort Edward, Hudson Falls, Saratoga, Fort Ticonderoga, Crown Point, Whitehall, and Port Henry, N. Y. Complainant was served with notice of their constructive placement, and demurrage charges in considerable amount were assessed while so held.

Complainant contends that the demurrage charges were unlawfully assessed for the reason that it was not the bill-of-lading consignee of the majority of the cars. It further contends that its private tracks were capable of receiving all cars as they arrived over defendant's line, and that the demurrage assessed was due to defendant's arbitrary action in withholding cars short of destination on constructive placement, when no conditions prevented actual delivery on complainant's tracks.

Defendant asserts that it had always dealt with the complainant under similar bills of lading as if complainant were the actual bill-of-lading consignee, and that it delivered as many cars daily as complainant could receive and unload; that at no time during this period did complainant request defendant to deliver cars in greater numbers; and that complainant's words and actions led defendant to believe that it was delivering daily all the cars complainant could handle.

The record indicates that, with the exception of 32 cars of pulp wood, a few cars of wood pulp, and 7 cars of coal, the shipments were consigned by various shippers in Canada under straight bills of lading to themselves. These shippers had previously notified the defendant in writing to deliver all cars so consigned to complainant's Fenimore siding. In some instances these notices specified that such delivery should be made on complainant's payment of the freight charges. Copies of some of these notices were in complainant's possession, and it had received cars under this arrangement and taken possession of the lading thereof for many years. Complainant paid the freight charges on all these cars without objection. It had at various times without objection paid demurrage on cars of which it was not the bill-of-lading consignee, although such charges had accrued after actual placement on complainant's tracks, and none had previously accrued on the basis of constructive placement. Defendant had always dealt with complainant as if it were the actual bill-of-lading consignee, and complainant admits that it received all

the notices of constructive placement. It does not appear that at any time complainant advised defendant that service should not be so made.

The evidence justifies the conclusion that both parties considered complainant the real consignee of these carload shipments, and complainant assumed the liabilities, as well as the privileges, of a consignee, with respect to matters incidental to the delivery, detention, and discharge of such shipments.

Defendant's demurrage tariff conformed substantially to the uniform demurrage code, and settlement for detention of cars was made under the average agreement, computed monthly, with the customary 48 hours free time. Under the agreement a charge of \$3 was made for each demurrage debit not offset by a credit, and a debit accrued for each day or fraction of a day a car was detained beyond the free-time period. After four debits had accrued on any one car, a charge of \$6 per day was made for each of the following three days and \$10 for each succeeding day. The constructive placement provision follows:

When delivery of cars consigned or ordered to any other than public delivery tracks or to industrial interchange tracks can not be made on account of the act or neglect of the consignee or the inability of the consignee to receive, delivery will be considered to have been made when the cars were tendered. The carrier's agent must send or give the consignee written notice of all cars he has been unable to deliver because of the condition of the private or interchange tracks, or because of other conditions attributable to consignee. This will be considered constructive placement.

Unless actual tender of cars is made or the consignee has informed the carrier that no more cars can be received, the rule requires the carrier in fact to place cars to the full extent of the consignee's physical capacity to receive them. The carrier under its rule must place cars constructively only because of the act or neglect of the consignee or the inability of the latter to receive them. In the instant case there was no actual tender; and complainant did not inform defendant that no more cars could be received. Defendant, before making constructive placement of cars, should have placed at complainant's disposal all the cars which complainant's sidings would hold. If complainant could on any day have received more cars than were delivered by defendant the demurrage debits and the resulting charges must be adjusted accordingly; but as delivery was made daily over an extended period, complainant should show that it could have unloaded more cars daily had they been actually instead of constructively placed.

In the light of the foregoing, the facts which resulted in the accrual of the demurrage charges may be examined.

The demurrage charges on certain cars of coal will be first considered. During the latter part of August, 1918, the local fuel ad-

ministrator placed an embargo on all cars of coal consigned to complainant. This embargo became effective while seven cars of coal were en route from mines in Pennsylvania to Fenimore, and these cars were held by defendant in its yards under constructive placement. Soon after the embargo was placed, it was discovered to apply only to cars billed prior to August 21, 1918, and not to complainant's shipments. The demurrage charges accrued as a result of this constructive placement were due to no disability of complainant and were not assessed under lawful tariff authority. Such charges should be refunded by defendant.

The record shows that due to the lack of space at adjacent points, defendant held many cars short of destination at Port Henry, N. Y., Crown Point, N. Y., Fort Ticonderoga, N. Y., and Whitehall, N. Y., distant 61, 54, 49, and 25 miles, respectively, from Hudson Falls. The demurrage tariff provides for constructive placement when delivery of cars can not be made "on account of the act or neglect of the consignee or the inability of the consignee to receive," and that in such circumstances "delivery will be considered to have been made when the cars were tendered." The word "tendered" must be construed and applied according to its ordinary and accepted meaning. Such a construction would certainly require that shipments be tendered for delivery at billed destination, or, at most, at a point reasonably adjacent to such destination. What would be reasonable depends on the circumstances of each case. Here all sidetracks and storage yards adjacent to Hudson Falls and Fenimore were congested, and the cars seem to have been moved as near to the final destination as was consistent with the operation of defendant's railroad without undue interference with traffic generally. Under the circumstances, the constructive placement was warranted, and demurrage charges collected upon such cars were lawful; but the consignee should be allowed credit for the time necessary to transport the cars from the point of constructive placement to the point of final placement. The charges may be subject to further reduction under the finding (d) hereinafter made.

On July 30, 1918, defendant held short of destination under constructive placement 32 cars of pulp wood. Complainant was served with notice of their placement on July 30 and demurrage was assessed from August 1, 1918. Defendant's only explanation as to why these cars were withheld on July 30 and 31 was its assumption that complainant's tracks could not accommodate them. A check of cars in complainant's plant on July 30 and 31 showed but 22 and 32 cars, respectively, under load on those dates. The record shows that no condition of complainant's tracks, nor any other condition attributable to complainant, prevented delivery of these cars within 24 hours after their arrival at Hudson Falls. Complainant must be allowed

credit on these cars for the period prior to the occurrence which disabled it and rendered it unable to receive and unload such cars, and demurrage did not lawfully begin to accrue on these 32 cars until August 3.

As to the remainder of the cars, constructive placement was made under the following circumstances:

At 2.30 p. m. on August 1, 1918, a fire broke out in a pile of pulp wood about 250 feet north of complainant's Fenimore mill. The fire spread and assumed considerable proportions. Its magnitude was such that a track more than 75 feet away and certain cars standing thereon were damaged. Approximately 26,000 cords of wood, or more than 160 carloads, were burned, and about 675 feet of double track leading to the Fenimore mill were wholly or partially destroyed. For a time the mill itself was threatened. The cost of repairing the damaged tracks was almost \$6,000. The fire was under control on the evening of August 2, and was entirely extinguished by August 4, 1918. Complainant's plant is served by a main spur with so-called auxiliary tracks. The main spur extends from Fenimore Junction westerly about 7,000 feet to a switch connection with the auxiliary tracks which serve the four conveyors and the Fenimore mill. The distance from this switch connection to the end of the auxiliary tracks is over 2,000 feet. The conveyors are located about 50 feet from the switch connection and extend along the auxiliary tracks almost to Fenimore wagon road which crosses the tracks about 950 feet from the switch connection. These conveyors are permanently located, with trackage space in front of each sufficient to accommodate three cars. The main spur proceeds in a northwesterly direction from the switch connection and serves the wood room adjacent to which about 16 cars can be spotted. The main track and the auxiliary tracks parallel each other about 75 feet apart. The fire began along the auxiliary tracks about 1,000 feet from the switch connection and spread across the intervening area to a runaround track along the main spur, which was also damaged by the fire.

The testimony as to whether the main track immediately adjacent to the runaround was damaged is conflicting. It is apparent, however, that for at least the first two days of the fire it would have been imprudent to have used this track for storing cars for unloading. On the day the fire commenced there were 91 cars in and around complainant's plant, 46 of which were under load. Of these, 16 were left standing at the mill until August 5, when operations were resumed. Complainant asserts that this fact had no bearing on the unloading facilities at other parts of the plant. Eighteen cars were wholly, and four others partially, destroyed by fire; and the remainder were removed by defendant on August 1 and stored. The latter were redelivered subsequent to August 5. Complainant's plant

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was customarily switched at night. Defendant of its own volition stopped delivering cars August 1. It made no deliveries until August 5, when it voluntarily resumed deliveries. From August 5 to August 9, inclusive, an average of 20 cars a day were delivered. During this period the tracks which had been damaged were being repaired, and a work train was employed during the day in bringing in materials and workmen. Subsequent to August 9 and up to September 5 defendant delivered cars in irregular numbers, ranging from 11 on August 31 to 71 on August 19, an average of 38 cars daily for the period.

The nondelivery of any cars from August 1 to August 4, and a curtailed delivery from August 5 to August 9, coupled with unusually heavy shipments, resulted in congestion and an accumulation of cars. From August 1 to September 5 defendant received and served notice of constructive placement of between 700 and 800 cars which were held short of destination because of the alleged inability of complainant to receive them. Complainant maintains that deliveries could have been made and cars unloaded between August 1 and 4 at certain parts of the plant unaffected by the fire, and that more cars could have been delivered on the other days than were actually placed by defendant.

Defendant produced testimony tending to show it was inconvenienced by the number of cars accumulated in its yards; and that on several occasions complainant's agents, when asked if the service defendant was providing was entirely sufficient to enable them to unload the maximum number of cars, answered that the service was satisfactory and adequate and that complainant was doing the best it could.

The record shows that under normal conditions complainant had trackage space available to accommodate at least 95 or 100 cars at one time without congesting the main spur running from Fenimore Junction to the point in the plant where the tracks diverge. The maximum number of cars that complainant had ever received in one day was 107, and the largest number in the plant on any one day during the period in question was 74. The usual number was considerably less. One of defendant's witnesses familiar with the layout and switching in complainant's plant testified that 95 cars were about all the plant could accommodate without causing inconvenience in removing the empties. This estimate did not take into consideration the cars which complainant asserts could have been placed on the main spur. However, if cars had been delivered daily to the extent of the admitted physical capacity of the tracks north of the switch connection with the auxiliary tracks, complainant would probably have had little cause for complaint. During the period of the fire, and the few days subsequent thereto, when the damaged

tracks were being repaired, that part of the trackage space lying west of Fenimore wagon road was necessarily unavailable. We conclude that, for the period subsequent to August 9, cars were not delivered on any day to the extent of the physical capacity of complainant's trackage facilities.

While it was testified by complainant's witnesses that cars could have been delivered to certain parts of the plant during the time of the fire, this is conjectural. The record justifies defendant in making no deliveries during the first three days in August. August 4 was Sunday; from August 5 to August 9 it was necessary to keep the main spur clear to permit the ingress and egress of the work train and the greater part of the usual storage tracks were not available. Such abnormal conditions and operations necessarily interfered with the full use of complainant's facilities until August 10. The maximum number of cars in the yards on any day during this period was 35 on August 7, of which 15 remained unloaded on August 8. The average number delivered daily during this period was 20 cars. This was about the maximum daily capacity from August 5 to August 9. On and after August 10 the conditions at complainant's plant were again normal, and cars could have been delivered up to the maximum capacity of complainant's tracks. As such capacity was considerably in excess of the average daily number delivered during the demurrage period, whether any more cars could actually have been delivered would depend on complainant's unloading capacity. Complainant's testimony as to this is somewhat speculative. It states that it had 80 men available for unloading and that four men could unload one car in an hour. It insists that with its large force of men and its extensive unloading facilities at the conveyors it could have unloaded from 75 to 100 cars per day during the entire period. Complainant's force was flexible, and more or less adaptable to the number of cars to be unloaded. But speculation as to what might have been done is unnecessary, as there is evidence as to complainant's actual unloading capacity. It is undisputed that little demurrage accrued during the month of July, 1918, although the deliveries of cars were heavier than in August. During July many cars were unloaded along the main spur, as complainant contends could have been done in August. Complainant unloaded an average of 55 cars per day at Fenimore, and only \$24 demurrage accrued, none of which was on account of cars of pulp wood. While the testimony of the parties is conflicting it seems fair to accept the performance in July as a test of complainant's unloading facilities and capacity. During the demurrage period 10 cars daily were held over under load on an average, but no demurrage accrued on any cars after actual delivery was made. While it had been complainant's custom

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to deliver to the conductor of the switching crew a switching list showing where certain cars were to be spotted, this had never been construed as binding on the defendant as to the number of cars to be delivered on that day. It was merely a statement of the number wanted at particular points. Defendant had always determined the number of cars to be brought in, and had usually delivered excess cars on the main spur, from which they were moved to the conveyors by complainant's own force as needed.

It is contended that several times during the periods in question defendant made delivery of later arrivals of cars, when it should have minimized complainant's damages by delivering the earlier arrivals. Substitution of detention has been amply provided for in every instance where the average agreement is in effect; indeed the very object of the average rule is to permit the handling of cars without regard to the exact order of arrival; and the rules provide for the application of the maximum free time to each car released. *Meeker v. C. R. R. Co. of N. J.*, 46 I. C. C., 657.

Upon the facts of record we find:

(a) That the demurrage charges assessed on the seven cars of coal heretofore more particularly described were unlawful.

(b) That the demurrage charges on cars held short of destination at Port Henry, Crown Point, Saratoga, Fort Ticonderoga, and Whitehall were lawful; but credit should be given complainant for the time necessary to transport the cars so held from the point of constructive placement to the point of actual placement.

(c) That demurrage charges on the 32 cars of pulp wood received by defendant on July 30 were placed by defendant constructively at a time when complainant had facilities to receive them; and that demurrage on such cars did not lawfully begin to accrue until August 8, 1918.

(d) That the demurrage charges collected on all other cars embraced in the issues were unlawful to the extent that the charges collected exceeded those that would have accrued had cars been delivered at the rate of 55 cars per day for the period subsequent to August 9.

(e) That complainant has been damaged in the amount of such unlawful charges and that it is entitled to reparation, with interest. The parties should adjust the matter in accordance with these findings and the record will be held open for 90 days to permit of such action. If they are unable to reach an agreement within that period the matter may be again called to our attention for further action in conformity with these findings.

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No. 10567.

NEW JERSEY ZINC COMPANY ET AL.

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

Submitted October 7, 1920. Decided April 9, 1921.

Change directed in classification rule providing basis of charges for the transportation of sulphuric acid and chloride of zinc remaining in tank cars returned to the original loading points. Former report 57 I. C. C., 201.

Frank M. Swacker for complainants.

Douglas Swift for defendants.

REPORT OF THE COMMISSION ON REARGUMENT.

BY THE COMMISSION :

In the original report in this case, 57 I. C. C., 201, we found that the following rule of the consolidated classification providing the basis of charges for the transportation of sulphuric acid remaining in tank cars returned to the original loading points was not shown to be unreasonable or unduly prejudicial :

If tank cars are not completely unloaded at destination and the remainder is returned in the same tank car to the original shipping point, the rating applicable on the same article in less than carload quantities in bulk in barrels shall apply, the charge not to exceed the charge for a carload of the same freight in tank cars; except that if the remaining substance is without commercial value, and there is no recovery, nor commercial consideration given to the substance by the shipper or consignee, the weight thereof need not be declared, and no charge shall be made therefor. * * *

Upon petition of complainants the case was reopened and is now before us upon reargument.

The petition of complainants is based upon the allegation that certain "questions brought in issue by the complaint" were not disposed of by us in our former decision, namely: (1) That the "rules and practices" of the defendants relating to charges for the transportation of sulphuric acid and chloride of zinc remaining in tank cars "returned" for reloading to points *other* than original loading points are unreasonable; (2) that the "rules and practices" of the defendants relating to charges for the transportation of *chloride of zinc* remaining in tank cars returned to original loading points are unreason-

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able; and (3) that defendants' rule is "too vague and indefinite to admit of proper application."

Practically all the cars loaded by complainants with chloride of zinc were returned empty, and upon the hearing little testimony was offered with respect thereto. The record indicates that the rule of the classification applied as well to this commodity, and the case was disposed of upon that assumption. The rule is carried in a note published in connection with the ratings on acids. The classification contains no similar rule with respect to chloride of zinc and makes no provision for its movement in tank cars at less-than-carload charges. Upon reargument, defendants' counsel stated that the carriers are willing to provide for the application of the same rule on chloride of zinc as on sulphuric acid.

The rule quoted does not apply on sulphuric acid remaining in tank cars forwarded for reloading to points *other* than the original loading point, and it also appears that no rules or practices of defendants providing a basis of charges for such transportation, either as to sulphuric acid or chloride of zinc, are brought in issue by the complaint.

The question principally discussed upon the reargument was the alleged vagueness of that portion of the rule having reference to "commercial consideration given to the substance by the shipper or consignee." The testimony establishes that in making settlement with the consignees complainants ordinarily make no deduction from the invoice price when the substance remaining in the car is less than 500 pounds in weight, but a credit is given when the weight is 500 pounds or in excess thereof, and it is complainants' position that the extension or nonextension of such credit is the sole determining factor that should be considered in determining whether "commercial consideration is given." Defendants, on the other hand, point to the fact that unless the car is washed out prior to reloading, the substance remaining forms a part of the succeeding shipment and is frequently "picked up" or dissolved therein; also that its weight is included in the invoice weight of such succeeding shipment; and they contend therefore that whether "commercial consideration is given" may not be determined solely by the test suggested by complainants. It is apparent that the rule as at present stated is open to criticism on the ground of indefiniteness, and that it should be clarified.

We find that the following would be a reasonable, nonprejudicial, and unambiguous rule for providing the basis of charges for the transportation of sulphuric acid and chloride of zinc remaining in tank cars returned to the original loading points:

If tank cars are not completely unloaded at destination, and the remainder of the lading is returned in the same car to the original shipping point, the weight thereof must be declared by the receiver, and the rating applicable on the same article in less-than-carload quantities in bulk in barrels shall apply, the charge not to exceed the charge for a carload of the same freight in tank cars; except that if no commercial consideration is given to the remaining substance, by means of a credit allowance or otherwise, or the substance is removed from the car and discharged as waste before a subsequent shipment is made therein the weight thereof need not be declared, and no charge shall be made therefor.

We shall issue no order at this time, but defendants will be expected to amend the classification within 90 days from the service of this report to conform to the views herein expressed. When this has been done and the matter is brought to our attention an order will be entered dismissing this complaint.

COMMISSIONER ESCH did not participate in the disposition of this case.

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No. 10633.

SCHRAM GLASS MANUFACTURING COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted January 12, 1920. Decided April 16, 1921.

Rate maintained by Director General of Railroads on coal from mines at Hillsboro, Ill., to complainant's plant at that place found not unreasonable. Complaint dismissed.

Edward A. Haid for complainant.

C. P. Stewart for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

A proposed report was served and no exceptions were filed.

The complainant alleges that the rate of 30 cents per net ton collected on numerous carloads of coal shipped between June 25, 1918, and November 20, 1918, from the mines of the Hillsboro Coal Company and the Kortkamp Coal Company at Hillsboro, Ill., to the plant of the complainant, also at Hillsboro, was unreasonable in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. Reparation is asked. Unless otherwise indicated, rates will be stated in cents per net ton.

The mines and plant are within the switching limits of the Cleveland, Cincinnati, Chicago & St. Louis Railroad, known as the Big Four, at Hillsboro. Complainant obtains nearly all of its coal from the mines of the Hillsboro Coal Company, about 7,600 feet from the plant. Occasionally it obtains a few cars from the Kortkamp mine. The movement is entirely over the Big Four. The car is taken empty from the classification yard and moved to the mine, is there loaded, is then moved to the westbound and eastbound yards of the Big Four, classified, weighed, moved to complainant's plant and placed for unloading. After being unloaded it is removed empty.

For a number of years prior to August 1, 1916, the rate on bituminous coal from the mines to complainant's plant was 10 cents, with a minimum charge of \$4 per car. Tariffs filed to become effective

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tive August 1, 1916, proposed to increase this rate to 15 cents, with a minimum charge of \$6 per car, but did not become effective because of disapproval by the Public Utilities Commission of Illinois. On December 15, 1916, the minimum charge was increased to \$4.50 per car. On June 25, 1918, the rate was increased to 30 cents, with a minimum charge of \$5.50 per car.

Prior to June 25, 1918, we allowed carriers in central territory to increase their interstate rates on coal by 15 cents, but on intrastate rates the Illinois commission limited the corresponding increase to 10 cents. The Big Four did not increase this Hillsboro rate thereunder. In arriving at the 30-cent rate defendant first added 5 cents, the difference between the increase allowed by us interstate and that authorized by the Illinois commission, to the 10-cent rate in effect on June 24, 1918, and then added the 15-cent increase authorized by his general order No. 28. On November 20, 1918, he reduced the rate under attack to 10 cents, with a minimum charge of \$5 per car. In August and September, 1920, the rate for interstate and intrastate, application, respectively, was increased to 13.5 cents and the minimum charge to \$6.50. Later in the year the minimum charge was increased to \$7 and remained unchanged when the present rate of 14 cents was established on February 19, 1921. The shipments moved while the 30-cent rate was in effect. Complainant's witness testified that shipments of coal to its plant weighed on the average about 50 tons. At the 30-cent rate the charges collected on an average car would be \$15.

A letter from the Railroad Administration to complainant dated October 23, 1919, referred to this reduction as follows:

the basis * * * is a temporary measure, and it is expected that further consideration will be given to a revision of switching charges, and that a reasonable basis will be established.

Complainant cited a charge of \$2.50 per car for switching from connecting lines at Hillsboro, effective October 25, 1916, where the haul was 3 miles or less, and \$3 when the haul was greater than 3 miles and not over 5 miles; also switching charges of \$2 per car plus 15 cents per net ton for hauls of 3 miles at Fontanet, Ind.; \$2.50 per car at Grafton, Ohio, for a haul of several hundred feet; \$3 per car plus 15 cents at North Bend, Ind., for a distance of 2 miles; and 10 cents, minimum \$5 per car, effective January 11, 1919, at East St. Louis, Ill. But the movements here before us necessitated two terminal services, and were in the nature of line hauls.

The establishment of the 30-cent rate on June 25, 1918, was the result of a general increase. Defendant's witness insisted at the hearing that the reduction on November 20, 1918, was temporary, to obtain until sufficient facts could be gathered upon which to de-

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termine what a reasonable rate would be, and that after analysis of the facts gathered the rate of 30 cents was deemed reasonable for the service, and was to be reestablished.

The principal evidence upon which defendant relies consists of a study made of the cost of performing the transportation between the mines and industries at Hillsboro, based upon a test conducted during June, 1918, the results of which are set forth in detail in an exhibit. From this it appears that from 75 to 85 per cent of the expenses directly allocated to terminal costs were ascertained and amount to 18 cents per ton. This does not include taxes or interest on investment. Defendant assumes that the expenses not considered would bring the cost figure to 20 cents. Applying an operating ratio of 66.67 per cent to the cost figure defendant shows a result of about 30 cents, or the rate assessed. The operative ratio of the Big Four for the year 1918 was 72.68, and its application to the cost figure would give 27.5 cents as a result.

It is not necessary to subscribe wholly to defendant's method of arriving at the terminal cost. Complainant has made no attempt to impeach the correctness of defendant's calculation. Certain it is that operating and other costs have risen since the rate from the mines to complainant's plant was first made 10 cents, and even if that was a reasonable maximum rate when instituted it does not follow that no more was reasonable at the time of movement. The inference is rather to the contrary. The action of the Director General in restoring the 10-cent rate, especially in the light of his specific declaration, is not an admission of the reasonableness of that rate as a maximum, nor a confession that he regarded the 30-cent rate of itself as unreasonable. No allegation of undue prejudice is made, and the citation of lower rates at other points is not conclusive of the unreasonableness of the rate charged.

Upon the record we find that the rate assailed was not unreasonable. The complaint will be dismissed.

No. 10892.

RAILROAD COMMISSIONERS, STATE OF FLORIDA,

v.

DIRECTOR GENERAL, ABERDEEN & ROCKFISH
RAILROAD COMPANY, ET AL.

Submitted November 17, 1920. Decided July 12, 1921.

Upon complaint attacking the line-haul rates and refrigeration charges on citrus fruits and vegetables from Florida producing points to various interstate destinations: *Held*, That the aggregate charges are not unreasonable, except (1) that the line-haul charges on vegetables, except celery, under refrigeration are unreasonable in that they do not provide in those instances where a lower minimum and higher rate apply than under ventilation for the alternative application of the same rate and minimum as under ventilation, and (2) that the refrigeration charges on fruits and vegetables are unreasonable in that they are based on an excessive quantity of ice. Carriers directed to revise their tariffs in accordance with the conclusions announced herein.

Dozier A. De Vane for complainants.

Fayette B. Dow for interveners.

Frank W. Gwathmey and *Henry Thurtell* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2. COMMISSIONERS McCHORD, DANIELS, AND POTTER.

DANIELS, *Commissioner*:

In their complaint filed September 11, 1919, as amended, the Railroad Commissioners of Florida attack the transportation rates and the refrigeration charges on citrus fruits and vegetables from producing points in Florida to various interstate destinations as now shown in Perishable Protective Tariff No. 1, I. C. C. No. 6, as unreasonable; also on vegetables under refrigeration, except celery, as unjustly discriminatory. We are asked to establish reasonable and just rates and charges for the future. The Joint Council of the National League of Commission Merchants of the United States, the International Apple Shippers' Association, and the Western Fruit Jobbers' Association of America intervened in support of the allegations of the complaint with respect to refrigeration charges. Reference hereinafter to present rates will be understood as mean-

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ing those in effect prior to the increases following *Increased Rates*, 1920, 58 I. C. C., 220.

LINE-HAUL RATES.

Complainants contend that the inclusion of the increased refrigeration charges, made effective from Florida on May 8, 1919, of items of cost covering the haulage of ice in the bunkers of refrigerator cars and the switching incident to the icing and re-icing of such cars, i. e., 1 cent per car per mile and 35 cents per car per switch, respectively, resulted in a double charge for these services, for the reason that the line-haul rates were at that time high enough to, and by operation of law did, include compensation therefor. The elimination of this alleged double charge by a proportionate decrease in the haulage rates is sought.

Complainants assert, and witnesses for defendants admit, that prior to May 8, 1919, the refrigeration charges from Florida did not include compensation for the haulage of ice and switching. It is argued that their inclusion in the refrigeration charges on the date mentioned simultaneously withdrew them from the haulage rates; and that therefore the carriers have been since that date, and are now, giving less service for the same amount of compensation. In referring to similar contentions by these and other interests represented in the *Perishable Freight Investigation*, 56 I. C. C., 449, in which the refrigeration charges on all perishable freight throughout the United States were under consideration we said, page 466:

After full consideration, we think it neither desirable nor practicable to attempt, in a country-wide investigation of this character carried on under pressure, to analyze the mass of conflicting opinion testimony offered, and determine, in the case of each separate class of perishable freight, whether or not the line-haul rates include compensation for all or some portion of the protective service afforded. Undoubtedly the best means of insuring full justice, in dealing with proposals to establish separate charges for protective service where none have heretofore existed or covering elements of cost which have not been so covered hitherto, is to consider at the same time the level of the corresponding line-haul rates. Only in this way can it be determined whether the increase is reasonable which would result in the aggregate charge for haulage and protective service combined.

In support of the contention that the haulage rates on this traffic included and include compensation for the items in question, complainants introduced copious extracts from the record in *Florida Fruit & Vegetable Assn. v. A. C. L. R. R. Co.*, 14 I. C. C., 476; 17 I. C. C., 552; 22 I. C. C., 11, to show that the carriers in defense of these rates testified to, and urged upon us the expense of ice haulage
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and extra switching incident to the transportation of fruits and vegetables under refrigeration.

For the purpose of showing that the rates are "unreasonably high" complainants compare the earnings thereunder with the average freight receipts for equal distances from all revenue freight within the southern and eastern districts, according to our annual report on statistics of railways, 1917, also with the yield under the rates contemporaneously in effect on like traffic from Los Angeles, Calif.; bananas from Mobile, Ala., and New Orleans, La.; fresh fish from Punta Gorda, Fla.; and on fresh meat from Chicago, Ill. Attention is also called to the fact that the two commodities last mentioned move under the so-called cost-of-ice basis in which no allowance is included for the haulage of ice and switching. No evidence with respect to similarity of transportation conditions was introduced, the showing being confined to bare comparisons and conclusions based thereon. Defendants argue that complainants' exhibits covering citrus fruits erroneously assume the average weight of a box of oranges to be 80 pounds, which is the estimated weight provided for by tariff, whereas the average weight is admittedly 90 pounds; that it is manifestly improper to compare the earnings on perishable traffic which moves in refrigerator cars with the average revenue on all traffic which embraces for the most part low-grade commodities moving in large volume in ordinary equipment; that the banana rates cited by complainants reflect the influence of water competition, that commodity having formerly moved to Tampa, Fla., direct by water and low rail rates were therefore made from New Orleans and Mobile to Tampa in an effort to secure some of this traffic; and that the fresh-fish rates from Punta Gorda and the fresh-meat rates from Chicago are perhaps lower than they reasonably might be.

A witness for defendants testified that for some years subsequent to the early eighties, the beginning of an appreciable perishable movement from Florida, oranges and vegetables moved by rail to Jacksonville and Fernandina, Fla., and Savannah, Ga., thence by water to eastern ports, at any-quantity rates based on a so-called gathering charge to the southern ports and the water rate beyond. The first through all-rail rate established on oranges from Jacksonville to New York, N. Y., in 1885, was an any-quantity rate of 40 cents per box, at which time the water rate from and to these points was 30 cents per box. On October 1, 1888, the all-rail rate was increased to 48 cents and on November 23, 1890, to 53 cents. The successive changes in the all-rail rates on oranges, which also apply on grapefruit, from Arcadia, Fla., to New York and Chicago, and in

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the vegetable rates from Sanford, Fla., to New York and Cincinnati, Ohio, are reproduced below from exhibits filed by defendants:

Rates on oranges and grapefruit, stated in cents per box.

Effective date.	From Jacksonville (when from beyond).	From Arcadia.	Remarks.
<i>To New York.</i>			
	<i>Cents.</i>	<i>Cents.</i>	
Nov. 23, 1890.....	53		
Year 1892.....	50.5	83.5	Reduction beyond Jacksonville resulting from Docket 282, 3 I. C. C., 694.
Nov. 5, 1896.....	50.5	80.5	First authentic record of through rates from Arcadia.
Nov. 30, 1897.....	50.5	78.5	Reduction in gathering charges to Jacksonville by the Florida Railroad Commission in Rate Issue No. 1, Sept. 30, 1897.
Nov. 1, 1902.....	50.5	75.5	Reduction in gathering charges to Jacksonville as result of hearings before the Florida Railroad Commission.
Sept. 15, 1908.....	46	71	Reduction in c. l. rates from Jacksonville when from beyond to New York and other eastern points, as result of the first decision in <i>Florida Fruit & Vegetable Assn. Case</i> . Prior to that date the rates to and beyond Jacksonville were generally any-quantity rates.
Apr. 16, 1912.....	46	66	Reduction in gathering charges to Jacksonville under the third decision in the <i>Florida Fruit & Vegetable Assn. Case</i> .
June 25, 1918 (present rates) ..	57.5	82.5	Increase of 25 per cent under general order No. 23.
<i>To Chicago.</i>			
Year 1891.....	60	83	
Nov. 8, 1896.....	60	80	
Nov. 30, 1897.....	60	88	Reduction in gathering charges to Jacksonville by the Florida Railroad Commission in Rate Issue No. 1, Sept. 30, 1897.
Nov. 12, 1898.....	59.5	87.5	Reduction of 0.5 cent per box beyond Ohio River crossings.
Nov. 1, 1902.....	59.5	84.5	Reduction in gathering charges to Jacksonville as result of hearings before the Florida Railroad Commission.
Dec. 11, 1907.....	59.6	84.6	Change in method of computing proportion beyond Ohio River crossings.
Apr. 15, 1910.....	53	78	Reduction in rates from Jacksonville when from beyond to Chicago and other western points under the second decision in <i>Florida Fruit & Vegetable Assn. Case</i> .
Apr. 16, 1912.....	53	73	Reduction in gathering charges to Jacksonville under the third decision in the <i>Florida Fruit & Vegetable Assn. Case</i> .
June 25, 1918 (present rates) ..	66.5	91.5	Increase of 25 per cent under general order No. 23.

Rates on vegetables.

From Sanford—	Rates per crate.		Rates per 100 pounds.		Remarks.
	Vegetables n. o. s. under refrigeration.	Vegetables n. o. s. under ventilation.	Potatoes.	Cabbage.	
<i>To New York.</i>					
Apr. 10, 1895.....	Cents. 53	Cents. 53	Cents. 57.5	Cents. 80.5	Revision made following the first report in the <i>Florida Fruit & Vegetable Assn. Case.</i>
Jan. 27, 1910.....	49	49	55	76.5	
Apr. 15, 1910.....	49	43	55	76.5	Revision made following the second report in the <i>Florida Fruit & Vegetable Assn. Case.</i>
Jan. 12, 1912.....	50	43	55	76.5	Revision of gathering charges up to Jacksonville following the third report in the <i>Florida Fruit & Vegetable Assn. Case.</i>
Apr. 1, 1912.....	50	43	48.5	76.5	Revision of proportional rates from Jacksonville on potatoes so as to restore the old relation to vegetable n. o. s. rates.
June 25, 1918 (present rates)...	63	54	61	95.5	Increase of 25 per cent under general order No. 23.
<i>To Cincinnati.</i>					
Apr. 10, 1895.....	35	35	38	58.5	Increase in proportional rates from Jacksonville to Ohio River crossings growing out of opinion in the first and subsequently found reasonable in the second report in the <i>Florida Fruit & Vegetable Assn. Case.</i>
Jan. 27, 1910.....	40	40	43	58.5	
Jan. 2, 1912.....	41	40	43	58.5	Revision of gathering charges up to Jacksonville following the third report in the <i>Florida Fruit & Vegetable Assn. Case.</i>
June 25, 1918 (present rates)...	51.5	50	54	73	Increase of 25 per cent under general order No. 23.

For defendants it was further testified that the all-rail rates established to eastern markets were made to meet the competition of water-and-rail rates and to encourage and build up the industry; that to the west the rates on citrus fruits were established to aid the Florida shippers to market their fruits in that territory, and on vegetables to meet the competition from Mississippi and Louisiana; and that no distinction was made as to the rates under ventilation and refrigeration either on fruits or vegetables. For many years after the all-rail routes were established the traffic was handled in ordinary box or ventilator cars, except for an occasional movement in refrigerator cars; and for many years after refrigeration service was afforded, in February, 1899, the entire citrus fruit crop was moved in ventilator or box cars, as were most of the vegetables.

Defendants contend, therefore, that to argue that the rates established by the carriers included any charge for haulage of ice or switching would presuppose that they imposed on shipments moving

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under ventilation a charge for a service never rendered; and that at the time the carriers established the rates in effect when the Florida commission and this Commission began the series of reductions subsequently made, they could not possibly have foreseen the extent to which refrigeration, or refrigerator cars, would be used in handling this traffic or to have taken into account the haulage of ice or switching. They point out that although their witnesses in the *Florida Fruit & Vegetable Asso. Case* recounted the services performed in connection with the movement of refrigerated shipments, no figures were presented which would have afforded a basis for an allowance for these services; and that since the decisions in that case resulted generally in reductions it can not consistently be said that the rates prescribed by us included compensation therefor. In further support of this contention it is observed that the different transportation rates and minima prescribed in that case on vegetables were so related to each other as to afford the carriers approximately the same revenue per car under refrigeration as under ventilation.

Defendants further observe that during the interval between the first and second supplemental reports in that case, we held in *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106, that "in determining what is a reasonable charge for furnishing refrigeration for the movement of citrus fruits from California to eastern markets, the expense of transporting the additional weight of the ice and for repairs to the ice bunkers should be considered"; and argue that we would not thereafter have established rates on fruits and vegetables under refrigeration from Florida which contained within themselves factors covering these services.

In support of the reasonableness of the present rates defendants testified that during the season 1918-19 the Atlantic Coast Line moved approximately 28,000 refrigerator cars southbound, practically all empty, for northbound loading, while nearly all of the 16,000 ventilated box cars used in transporting perishables northbound moved into this territory under load; that refrigerator cars cost approximately \$4,500 each as compared with \$3,850 for a ventilated box car; that the claims the Atlantic Coast Line will have to pay on the citrus fruit movement during the past season, based upon a conservative estimate, will amount to 8 per cent of the gross revenues as against approximately 2.5 per cent for all freight traffic; that the schedules on perishable freight provide for much faster movement than the ordinary dead-freight schedules, to accomplish which it is necessary to reduce the tonnage from 15 to 20 per cent; and that the average carload of revenue freight in the southern district, approximately 25 tons, as shown by our annual report on statistics of railways, 1917, exceeds the revenue freight in a car of citrus

fruit by approximately 25 per cent, and in the case of vegetables by over 50 per cent. It is therefore argued that car-mile earnings of 24.8 cents on citrus fruits and 21.9 cents on vegetables from Palmetto, Fla., to New York, 1,193 miles, can not be regarded as excessive in comparison with the average of 20 cents on all traffic in the southern territory. The average earnings on all traffic are based on our report of 1917, i. e., 16 cents, to which has been added 25 per cent to cover the increase authorized by general order No. 28 of the Director General of Railroads; the earnings on citrus fruits are based on 360 boxes per car at 90 pounds per box, admittedly the weight of a box of oranges, or 32,400 pounds, and on vegetables, on the average loading of 415.5 boxes, or 20,775 pounds.

Considerable testimony was offered by complainants as to the lengthening of schedules during the period of federal control and the delays in transit to the principal points of consumption, in view of which they urge that the unusual amount of claims filed is of no importance in this case, these claims having resulted from inefficient transportation. The delays were attributable to strikes and lack of motive power as well as to other causes incident to the world war.

The rates here assailed were the subject of three comprehensive investigations extending intermittently over the period from 1908 to 1911, *Florida Fruit & Vegetable Asso. Case*. In *Fruits from Florida*, 43 I. C. C., 595, in which the proportionals beyond Jacksonville as well as the through rates on citrus fruits to certain of the more important southeastern points and to Ohio River points were approved, we said that these rates "were made to meet, so far as consistently within our power, a serious commercial and competitive exigency which then confronted the Florida growers." The same thing is true as to the rates to eastern points. Save for the increases effected under general order No. 28, the present rates are the same as those either approved or prescribed in those cases. The record in this case discloses substantially no changed circumstances from those surrounding the movement of this traffic when the cases referred to were decided, except that the movement, especially under refrigeration, has increased.

In the *Florida Fruit & Vegetable Asso. Case* complainants founded their contention that the orange rates were excessive principally on the ground that, distance considered, they exceeded the rates from California. In our first decision in that case, after reciting some inherent disadvantages under which the Florida shipper labored in the movement of his product in comparison with that of California, we stated that it would appear reasonable that the cost per mile of moving this fruit from the groves of Florida to market ought to be more than from the fields of California. In that case we prescribed,

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among other things, (1) a distance scale of reasonable maximum rates on pineapples, citrus fruits, and vegetables, carload and less than carload, applicable from producing points in Florida to Jacksonville for beyond; (2) reasonable maximum all-rail rates on citrus fruits, in carloads, beyond Jacksonville to points in the east and north of the Ohio River; and (3) reasonable maximum rates on vegetables, in carloads, from Florida base points to points in the east. As a result of the findings and orders in that case the through rates on both fruits and vegetables, in carloads, to eastern points as well as to points north of the Ohio River were, generally speaking, reduced, except on vegetables n. o. s. and potatoes, as to which an increase in the proportional rates applicable from Jacksonville to the Ohio River was approved. The resultant changes in the rates have been previously detailed, and involved in some instances the establishment of carload rates in lieu of any-quantity rates. In finding in the same case that the refrigeration charges then applicable on fruits and vegetables from Florida were not excessive, we said, 14 I. C. C., at page 508:

The railroad company is charged with the duty of refrigeration, and in passing upon the reasonableness of the charges which are made by the defendants for this service, we must consider the additional expense which is entailed upon it by the movement of these fruits and vegetables under refrigeration as compared with their movement under ventilation, as well as the cost and hazard of performing the service to the Armour Company (owner of the Fruit Growers Express). It must therefore be borne in mind that the cost to the railroad itself is greater when vegetables are moved under refrigeration than otherwise. The car itself is heavier. An additional weight of ice and salt must be carried. It is often necessary, as already observed, to haul these cars in both directions empty, which not only involves a transportation service but also the payment of car mileage when the car contains no paying freight in either direction.

It does not appear that the elements of ice haulage and switching entered into the making of the line-haul rates in the first instance, and it is evident that in prescribing the present rates we made no allowance therefor, but on the contrary regarded these items as constituting proper components of the refrigeration charges. Even if complainants' contentions in this respect were founded on fact, the present aggregate charges for transportation and refrigeration, except as hereinafter shown, do not appear to be unreasonably high, taking into consideration the fact that the movement up to the base points is through a sparsely settled country of low traffic density and, throughout, largely in equipment which moves practically empty in one direction and under comparatively light load in the other; that expedited service is required and that the attendant hazard is considerable. Upon a state of facts not dissimilar to those here presented we recently held in *California Citrus League v. Director* 61 I. C. C.

General, 58 I. C. C., 373, that the rate of \$1.15 per 100 pounds in effect on oranges from California to points between the Rocky Mountains and the Atlantic seaboard north of the Ohio and Potomac rivers, prior to June 25, 1918, was not shown to have been unreasonable. After stating that, in determining in the *Arlington Heights Case* that the line-haul rate of \$1.15 was not unreasonable, we evidently considered the extra cost to the carrier of ice haulage, and that thereafter in a supplemental report we had held that the cost of this service should properly be included in the refrigeration charge, we said that ice haulage was only one of the many features that entered into the decision of the reasonableness of that rate in 1910, and that it did not necessarily follow that we would obtain a reasonable rate in 1917 and 1918 by reducing this rate, found unreasonable in 1910, an amount equivalent to the cost of transporting the ice.

MINIMUM ON VEGETABLES UNDER REFRIGERATION.

In our second report in the *Florida Fruit & Vegetable Asso. Case* we prescribed on vegetables, in carloads, from Florida base points to certain eastern destinations, minima of 420 crates, 21,000 pounds, under ventilation, and 350 crates, 17,500 pounds, under refrigeration, with rates in each instance 6 cents per package higher under refrigeration than under ventilation. In the third report in that case like minima were prescribed on this traffic from producing points in Florida to Jacksonville, when for beyond, with rates from 1 cent per 100 pounds up to 40 miles to 3 cents per 100 pounds over 480 and up to 500 miles higher under refrigeration than under ventilation. Complainants now ask that the minimum under refrigeration be increased, except on celery, to that applicable to movements under ventilation and that the rates be equalized, alleging that the rates under refrigeration are unreasonable and unjustly discriminatory. Upon brief they state that they would not object to the present rates and minimum if an alternative basis providing for the same rates and minimum under refrigeration as apply under ventilation were established.

Complainants show the 1919-20 movement of six shippers embracing 227 carloads, of which 136 were shipped by the Manatee County Growers Association, and the remainder from Rocky Point and Gainesville, Fla. Many of the shipments embraced in the exhibit filed by the Manatee County Growers Association moved under ventilation, the average of those moving under refrigeration being less than 400 crates. The average of the shipments from Rocky Point and Gainesville, however, which consisted of cabbage, cucumbers, peppers, beans, and eggplant, under refrigeration is in excess of 450

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crates. A representative of the Manatee County Growers Association testified that vegetables, except celery, can be loaded in refrigerator cars under ice to the minimum applicable under ventilation, and that a uniform minimum would be desirable. Counsel for complainants stated that at a conference of shippers held in Jacksonville, March 24-25, 1919, a unanimous request was made for a uniform minimum and rate on vegetables, except celery, under refrigeration and under ventilation. A letter of record from one of the Gainesville shippers states that he and all other shippers with whom he had talked are in favor of a uniform minimum.

For the defendants it was testified that the average refrigerated load via the Seaboard Air Line Railway from November 1, 1919, to May 31, 1920, was 385 packages. It was admitted, however, that due to the fact that cabbage is now being shipped in refrigerator cars and that the movement of beans has increased, the loading of vegetables under refrigeration is now in excess of the prescribed minimum, although it is pointed out that the shortage of equipment and the efforts of the Food Administration throughout the period of the war and for some time subsequent thereto induced the loading of cars to their maximum carrying capacity, as nearly as possible, and that therefore complainants' exhibits do not represent the average to which shippers would otherwise voluntarily load.

It appears that in prescribing the basis assailed we were influenced by the fact that at that time the principal vegetables shipped from Florida under refrigeration were celery and lettuce, which we stated could not properly be loaded in excess of 350 crates. Since that time the movement under refrigeration of other vegetables, such as cabbage, cucumbers, and beans, heavy loading commodities, has increased and it appears that to-day vegetables shipped out of Florida under refrigeration, with the exception of celery, can be and are loaded in excess of 420 crates per car, which tends to show that the reasons which induced the establishment of a lower minimum under refrigeration than under ventilation no longer exist, except as to celery. The retention of the present basis with the basis applicable under ventilation as an alternative, as proposed by the complainants, would provide the carriers with a revenue per car under refrigeration equal to that under ventilation, which appears to have been the result sought through the establishment of different minima with varying rates. Furthermore, it appears that the same line-haul rates with a minimum of 400 crates apply on vegetables under refrigeration and under ventilation from Florida to points on and north of the Ohio River; also that the line-haul rates and minimum on the same commodities out of Louisiana and Mississippi, large vegetable-producing states, apply alike to refrigerated and ventilated movements.

REFRIGERATION CHARGES.

The attack upon the refrigeration charges is directed principally to the alleged excessive amount of ice used in making up the present stated refrigeration charges. These charges were supported in the *Perishable Freight Investigation* by an exhibit submitted by the United States Railroad Administration, showing that 11 tons of ice were used initially and for re-icing citrus fruits and vegetables from Palmetto to New York and New Orleans, 11.5 tons to Cincinnati, and 12.5 tons to Chicago and Boston, Mass. Complainants contend that based on the results of investigations, hereinafter referred to, made by our inspectors the carriers are charging for an excess of at least 3 tons, and therefore ask for a reduction in the refrigeration charges of not less than \$13.50 per car, 3 tons at \$4.50 per ton, the cost figure used in making up these charges.

Exhibits were submitted on behalf of defendants purporting to show the quantity of ice "used" for refrigerating shipments of citrus fruits and vegetables from Florida during the months January to April, inclusive, 1920. The cars "tested" equaled 87.82 per cent of the vegetable shipments and 80.9 and 83.97 per cent, respectively, of the citrus fruit shipments under full and half-tank refrigeration. During the test period the average consumption of ice on citrus fruits and vegetables under full refrigeration is shown, as 10.78 tons to New York, 12.05 tons to Cincinnati, and 12.80 tons to Chicago and Chicago rate points, or slightly less to New York and somewhat more to Cincinnati and Chicago than the amount used in basing the charges to those points; and on citrus fruits under half-tank refrigeration, 7.84, 9.47, and 9 tons, respectively. It developed at the hearing that these figures, as well as those introduced in the *Perishable Freight Investigation* in support of these charges, represent the amount of ice for which the carriers paid, as shown by the records of the Fruit Growers Express.

During portions of the same period investigations were made by our inspectors for the purpose of determining the quantity of ice actually used in the refrigeration of fruits and vegetables out of Florida. Between January 8 and 31, 1920, the inspectors were stationed at Fort Myers, Palmetto, Lakeland, High Springs, Sanford, and West Jacksonville, Fla., Waycross and Atlanta, Ga., Hamlet and Rocky Mount, N. C., and Potomac Yard, Va., the last named being the final point at which shipments are re-iced prior to arrival at destinations north. A second investigation was made between March 17 and April 11, 1920. Unlike the first investigation, the second did not follow the cars through to Potomac Yard, although an actual check of the amount of ice furnished was made at each of the initial

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and re-icing points covered by the first investigation including Potomac Yard.

The following recapitulates the results of the first investigation, the details of which, such as car numbers, commodities shipped, points of origin and destination and of icing and re-icing appear in exhibits of record:

	Cars checked.	Ice placed in cars.	
		Amount.	Average per car.
Full-tank cars:		Pounds.	Pounds.
From Fort Myers ¹	44	753, 772	17, 313
From Lakeland ²	27	478, 720	17, 730
From Sanford ³	42	626, 350	14, 913
From Sanford, initially iced at Jacksonville ⁴	134	2, 196, 680	16, 540
From Palmetto ⁴	373	5, 726, 826	15, 360
Total	620	9, 815, 317	15, 831
From Fort Myers, Lakeland, and Sanford ⁴	36	483, 459	13, 430
Half-tank cars:			
From Fort Myers ¹	16	244, 240	15, 266
From Lakeland ²	27	322, 926	12, 071
From Lakeland and Sanford ³	34	436, 200	14, 300
From Palmetto ⁴	3	35, 260	12, 750
From Fort Myers, Lakeland, and Sanford ⁴	21	242, 647	11, 554
Total	101	1, 304, 263	13, 507
Initial icing and first re-icing only, from Fort Myers, Lakeland, Sanford, and Palmetto (all routes).....	408	4, 826, 260	10, 600

¹ Route No. 1: Via west coast division of the Atlantic Coast Line Railroad, Lakeland, High Springs, Waycross, Rocky Mount, and Potomac Yard.

² Route No. 2: Via Jacksonville division of the Atlantic Coast Line Railroad, Jacksonville, Rocky Mount, and Potomac Yard: via Jacksonville and short line via Nahunta, Ga., and Potomac Yard, except that cars billed to Waycross for reconignment are moved via Waycross, Rocky Mount, and Potomac Yard.

³ Route No. 3: Via High Springs, Jacksonville, and Waycross to Atlanta.

⁴ Route No. 4: Via Seaboard Air Line Railroad, West Jacksonville, Hamlet, and Potomac Yard.

It was testified that an additional re-icing station was opened along routes 1 and 2 subsequent to the first investigation and prior to the second; and that during the second investigation, due to a shortage of ice or other causes, cars were held at some points until the bunkers were empty, or practically so, before being re-iced, which resulted in a higher average per car at Sanford and Waycross than during the first investigation and consequently in the total average. Disarrangement of train schedules, lack of motive power, and strikes resulted in delays throughout these investigations, and coincidentally in a probably greater consumption of ice en route than during normal times.

The record also shows that 435 out of 1,386 full-tank cars initially iced at Sanford, Fort Myers, Lakeland, Palmetto, and Jacksonville during the first investigation had a total of 1,542,750 pounds of old ice in the bunkers, while the bunkers of 41 of the 155 full-tank cars checked during the second investigation contained 91,000 pounds of

old ice; an average of approximately 1,000 pounds per car for the 1,541 cars checked. Under a rule in defendants' tariff the ice remaining in the bunkers at the end of trips is the property of the carriers, and can be used for any purpose they see fit. That no allowance was made for this old ice appears from the fact, testified to by two of our inspectors and admitted by defendants' witness, that 9,600 pounds of ice are charged against each F. G. E. car initially iced under full-tank refrigeration and 4,800 pounds under half-tank refrigeration, the alleged respective capacities, regardless of the amount actually supplied. On cars other than F. G. E., it appears that in some instances 9,600 pounds were charged for, regardless of capacity, while in other cases the charge was based on the indicated capacity. At re-icing stations the amount required to fill the bunkers is estimated by the inspector of the refrigerator-car company and the ice company's representative, and payment therefor made on basis of such joint estimate. In explanation of the 9,600-pound allowance the former general manager of the Fruit Growers Express testified that in order to avoid controversy between his company and the companies supplying ice, the former contracted to allow the latter 9,600 pounds for initial icing, the understanding being that the bunkers would be filled to the satisfaction of its inspectors. This allowance, which he stated was probably a little in favor of the ice companies, and would necessarily have to be in order to reach an agreement with them, was arrived at after tests under the joint supervision of the express and ice companies, which showed varying weights due to the different methods of placing ice in the bunkers.

One of our inspectors testified that an actual test was made by him at Fort Myers, in the presence of the foreman of the ice plant and the agent of the Fruit Growers Express, for the purpose of determining the amount of ice that could be placed in the bunkers of an F. G. E. car; that in making this test the ice was weighed and special care was taken in loading, but that it was impossible to load more than 4,400 pounds in one of the bunkers, or 8,800 pounds per car. From data submitted by defendants subsequent to the hearing it appears that out of a total of 4,280 F. G. E. cars, about 500 have a bunker capacity of from 18 to 15 cubic feet less than that of the other F. G. E. cars. It also appears from the investigations made by our inspectors that the bunkers of some of the F. G. E. cars were loaded somewhat in excess of 8,800 pounds. We are of opinion, upon the evidence submitted, that the average loading capacity of the bunkers of the F. G. E. cars as a whole is not in excess of 9,200 pounds per car, and that under the methods of loading prevailing in this territory the average amount of ice used in full-tank loading of the empty bunkers of these cars is substantially

less and does not exceed 8,500 pounds, the investigations disclosing that the bunkers were frequently loaded with less than 8,500 pounds, and in some instances with 7,500 pounds or even less. Obviously, therefore, the carriers have been paying for considerably more ice than they have received.

In referring to the testimony of our inspectors that the amount of ice placed in the bunkers was not checked, defendants' witness stated that that was true and strictly in accordance with instructions; that it was obviously impossible to do so inasmuch as at many stations 200 cars are iced per day; and that the duty of the inspector is to see that the bunkers are filled to capacity both initially and when re-iced, not to check the amount supplied, the primary purpose of icing being to afford proper refrigeration and that if the bunkers are filled to capacity the precise amount of ice furnished is immaterial.

While admitting that the tests made by our inspectors might be fairly representative of that period, defendants argue that the only accurate way to arrive at the average amount of ice consumed is to take the entire movement. The record, however, shows that perishables out of Florida move principally in the winter months; citrus fruits from October to April, inclusive; lettuce from December to March, inclusive; celery from February to May, inclusive; cabbage from February to March, inclusive; and miscellaneous vegetables, such as eggplant, peppers, beans, etc., from January to May, inclusive. It would appear, therefore, that the movement is confined largely to the months during which the investigations were conducted.

The interveners, upon brief, seek to have the refrigeration charges reduced by the amount included therein for switching, on the ground that the record shows that perishable freight under refrigeration is actually switched very much less than dead freight. They also urge that the amount allowed for ice haulage should be reduced to correspond with the average quantity of ice hauled. While these matters are apparently outside of the issues as presented and relied upon by complainants at the hearing, the complaint is broad enough to include them, and as evidence upon which interveners' contentions are based was introduced at the hearing without objection on the part of defendants, we think it is proper to dispose of the questions thus raised.

The inclusion of these items in the stated refrigeration charge was approved in the *Perishable Freight Investigation*, as were the amounts of 35 cents per car for switching and 1 cent per 100 pounds per 100 miles for ice haulage, equivalent to 2 mills per ton per mile. We held in the *Perishable Freight Investigation* that extra switching
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made necessary by refrigeration services is a proper factor in estimating this cost, and we find nothing in the present record which warrants a different conclusion on the ground urged by interveners. Even if it be a fact, as urged, that perishable freight is switched less than dead freight, it does not follow that the switching charge approved by us in the *Perishable Freight Investigation* as well within reason is not a proper factor of the refrigeration charge on this traffic. The ice-haulage component, which, from Palmetto to New York, 1,193 miles, is \$11.93, represents approximately 5 tons of ice at 1 cent per 100 pounds per 100 miles. As we observed in the *Perishable Freight Investigation*, this rate per mile appears to be lower than it reasonably might be, and on the whole we think it is sufficiently low to compensate for the difference between the weight of ice used in computing the ice-haulage factor and the actual average amount of ice hauled in the bunkers.

Complainants also call attention to the fact that the half-tank refrigeration charges out of Florida are 78 per cent of the full-tank charges. notwithstanding our finding in the *Perishable Freight Investigation*, based on the meager evidence there available, that they should not exceed 70 per cent. The testimony in the instant case indicates that, while approximately one-half as much ice is used initially, practically the same amount is consumed in transit in a car under half-tank as in one under full-tank refrigeration. The record suggests that as the volume of ice is less, the ice being placed in the upper half of the bunker, there is permitted a freer circulation of air which results in a more rapid meltage of the ice. It appears from the check made by our inspectors that the half-tank charges are not out of line with those applicable for full-tank refrigeration, in so far as long-haul traffic, such as that here involved, is concerned.

Our inspectors further testified that the facilities for the manufacture of ice in Florida are inadequate, shortages at various points during the inspection periods having necessitated the shipment of ice from as far north as Fayetteville, N. C., and as far west as Birmingham, Ala., and that the icing platforms at Waycross, Jacksonville, West Jacksonville, and Palmetto are inadequate and are not equipped with conveyers, which necessitates the placing of ice on platforms some time in advance of the arrival of trains and results in a considerable meltage. It is apparent that improvements in the matter of icing facilities in this territory have not kept pace with the increased movement. The representative of the Fruit Growers Express, which was succeeded on May 1, 1920, by the present company, stated that several improvements which were impossible during the war are under way and that he had for some time past urged

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upon his company, and had recommended to the new company, the advisability of entering into the ice business so as to take care of the refrigerated movement out of this territory. This recommendation merits most careful consideration.

We find that the aggregate transportation and refrigeration charges assailed are not unreasonable except that the haulage charges on vegetables, other than celery, under refrigeration are unreasonable in that they do not provide in those instances where a lower minimum and higher rate apply than under ventilation for the alternative application of the same rate and minimum under refrigeration as under ventilation; and except that the refrigeration charges are unreasonable to the extent of 20 per cent of the cost-of-ice factor embraced therein.

No attack is made, and no evidence was introduced, as to the other elements which enter into the stated refrigeration charges—namely, cost of ice, bunker repairs, and supervision—and our findings herein are not to be understood as indicating our approval or disapproval on this record of the stated refrigeration charges, in so far as the measure of those components is reflected therein.

Defendants will be expected, without a formal order, to revise their charges on this traffic in accordance with the conclusions announced herein within 60 days from the date of service of this report. If this is not done the matter may be brought to our attention.

58355°—21—vol. 61—31

No. 10588.¹
SOUTHERN COTTON OIL COMPANY
v.
DIRECTOR GENERAL, SOUTHERN RAILWAY COMPANY,
ET AL.

Submitted January 28, 1921. Decided April 19, 1921.

Upon further hearing, rate of 21 cents on coconut oil in tank-car loads from Charleston, S. C., to Savannah, Ga., found to have been unreasonable to the extent that it exceeded 16 cents and also unduly prejudicial to the extent that it exceeded the rate contemporaneously applicable on cottonseed oil in tank-car loads. Damage found not to have resulted from the undue prejudice, but reparation awarded to the basis of rates found reasonable. Original report in 56 I. C. C., 263.

Oudin, Kilbreth & Schackno for complainant.

C. J. Rixey, jr., and C. B. Northrop for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner.

In our original report, 56 I. C. C., 263, we found that rates on coconut oil in tank-car loads from Charleston, S. C., to Babbitt, N. J., Buffalo, N. Y., and Savannah, Ga., in April, May, and June, 1917, were unreasonable to the extent that they exceeded the rates contemporaneously applicable on cottonseed oil, and awarded reparation on seven shipments, including three which moved from Charleston to Savannah over the lines of the Southern Railway Company. Upon petition of defendants the case was reopened for further hearing concerning the rate from Charleston to Savannah.

The Southern Railway Company, the only defendant interested in the rehearing, will be referred to hereinafter as either the Southern or the defendant, and the Seaboard Air Line Railway and the Atlantic Coast Line Railroad as the Seaboard and the Coast Line, respectively. Rates will be stated in cents per 100 pounds.

Savannah is 96 miles from Charleston via the Seaboard, 115 miles via the Coast Line, and 188 miles via the Southern. When the shipments moved the Southern and the Coast Line maintained com-

¹ This report also embraces No. 10588 (Sub-No. 1), Same v. Director General, Southern Railway Company, et al.; and No. 10589, Same v. Director General and Southern Railway Company.

modity rates on cottonseed oil of 8 cents in barrels and 6 cents in tank cars, which, it appears, were originally established to meet water competition. Upon opening its line between Charleston and Savannah in 1917 the Seaboard did not meet these rates but published a rate of 11 cents on cottonseed oil in tank cars or barrels. The fifth-class rate of 21 cents was applicable on coconut oil via the three routes when complainant's shipments were made. Effective June 25, 1918, under general order No. 28 of the Director General of Railroads, the rates on cottonseed oil were increased to 7.5 cents in tank cars and to 10 cents in barrels via the Southern and Coast Line and to 14 cents via the Seaboard, and the fifth-class rate became 26.5 cents. On February 3, 1919, under freight rate authority No. 3714 of the Director General of Railroads, the commodity rates on cottonseed oil, which had for some time applied also on peanut and soya-bean oils, were made applicable on coconut oil. These rates were increased on August 26, 1920, under our general authorization, and on September 1, 1920, in connection with a general revision of vegetable-oil rates between south Atlantic ports, a commodity rate of 20 cents was established via all three lines between Charleston and Savannah, which was increased to 25 cents effective November 25, 1920.

Upon rehearing defendant produced no substantial evidence to prove that cottonseed and coconut oils are not competitive, but attempted to show that the 21-cent rate charged was materially lower than the contemporaneous fifth-class rates generally in the southeast and was not unreasonable as applied to cottonseed oil. It compared the class rates with commodity rates on cottonseed oil in the southeast and between Shreveport, La., and Texas points, which latter were prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83. Complainant made comparisons with a number of rates affected by water competition and with rates to Savannah from Georgia, South Carolina, and Alabama points. A witness in its behalf admitted that the 6-cent rate was low and said that in his opinion 11 cents would have been reasonable.

These various comparisons show that even for the short-line distance the 21-cent fifth-class and 6-cent commodity rates were lower than the general level of fifth-class and cottonseed-oil commodity rates in the southeast. The fifth-class rate from Charleston to Savannah was exceeded at intermediate points on the three lines, being 29 cents at Levy, S. C., on the Seaboard, 26 cents at Puryburg, S. C., on the Coast Line, and 32 cents at Tavana, S. C., on the Southern. On the other hand, these comparisons show that even over the longer route of the Southern, the 21-cent rate was higher than the general level of commodity rates on cottonseed oil in the southeast. Based on the distance via the short line, 115 miles, the 6-cent rate

yielded 10.4 mills per ton-mile, and, on a car of 60,000 pounds, 31.3 cents per car-mile; via the Southern, 188 miles, 6.4 mills per ton-mile and 19.1 cents per car-mile. The 21-cent rate yielded the Southern 22.3 mills per ton-mile, and, on 60,000 pounds, 67 cents per car-mile. A rate of 16 cents would yield 17 mills per ton-mile over the Southern route, and, if increased 25 per cent under general order No. 28 and the aggregate by 25 per cent under the general increases, would equal the present rate.

Each of complainant's shipments of coconut oil exceeded 95,000 pounds. Defendant's witness testified that there is a 50 per cent empty movement of the tank cars used in transporting vegetable oils, and complainant's evidence as to its shipments over the Southern shows only a slightly lower percentage.

Complainant shipped the oil to itself at Savannah for further refining. The record does not disclose what competition complainant had to meet in the sale of the refined oil or what disposition was finally made of it. There is a substantial movement of cottonseed oil between Charleston and Savannah, complainant's shipments alone approximating 16,000 barrels per annum. There is another refinery at Savannah, but the volume of its shipments, or of the total cottonseed-oil traffic, between Charleston and Savannah is not shown. Complainant is the only shipper of coconut oil between these points, and at neither hearing was there any attempt to show how or to what extent damage resulted from the exaction of a higher rate on these shipments than was contemporaneously in effect on cottonseed oil.

We find that the rate attacked was unduly prejudicial to the extent that it exceeded the rate from Charleston to Savannah contemporaneously applicable on cottonseed oil in tank-car loads and that it was unreasonable to the extent that it exceeded 16 cents per 100 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. It is not shown that complainant was damaged by the undue prejudice herein found.

No order for the future is required.

61 I. C. C.

No. 11489.
SWIFT & COMPANY
 v.
DIRECTOR GENERAL, AS AGENT.

Submitted January 10, 1921. Decided April 22, 1921.

Rates on solidified soya-bean and peanut oils, in bags, in carloads, from Atlanta, Ga., to various interstate destinations found unreasonable. Reparation awarded.

R. D. Rynder for complainant.

Alex. M. Bull for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, alleges that unreasonable charges were collected by defendant on 94 carloads of solidified soya-bean and peanut oils, in bags, shipped between January 1, 1918, and September 8, 1919, from Atlanta, Ga., to various interstate destinations. Reparation only is asked. Rates will be stated in cents per 100 pounds and do not include the general increase of 1920.

Solidified soya-bean and peanut oils are used in the manufacture of lard compounds and are worth about 16 cents per pound. The details of the shipments, the sixth-class rates charged, and the commodity rates contemporaneously applicable on like shipments in barrels, which complainant alleges would have been reasonable for application on these shipments, are as follows:

From Atlanta to—	Routing.	Carloads.	Average weight.	Class rates (bag shipments).		Commodity rates (barrel shipments).	
				Prior to June 25, 1918.	June 25, 1918, and after.	Prior to June 25, 1918.	June 25, 1918, and after.
Memphis, Tenn.....	Southern.....	10	Pounds.	Cents.	Cents.	Cents.	Cents.
Do.....	N. C. & St. L.....	38	51,708	38	47.5	21	23.5
Chicago, Ill.....	N. C. & St. L.-Ill. Cent.....	7	47,318	38	47.5	21	28.5
Harvey, La.....	A. & W. P.-W. Ry. of Ala.-L. & N.-Tex. & Pac.	17	44,571	64	80	33	41.5
Boston, Mass.....	So.-Potomac Yard-Penn.-N. Y., N. H. & H.	6	44,067	.....	67.5	.....	41.5
Jersey City, N. J.....	So.-Potomac Yard-Penn.-Erie.	16	45,950	54	67.5	21	30

The weight of shipments in barrels averages about 30,000 pounds per car and in bags ranges from 40,000 to more than 50,000 pounds. The oil is no more susceptible to damage when in bags than in barrels, and since 1917 the carload rating has been the same for both in southern classification. Complainant in April, 1918, requested defendant to establish on shipments in bags the rates then applied on shipments in barrels, but its request was not granted until shortly after these shipments had moved.

Complainant compares the rates charged and those subsequently established with commodity rates from Atlanta to the same destinations on other commodities taking the same or higher rating in southern classification and with rates on solidified oils for similar distances between points in the southwest. These tend to show that the rates charged were unreasonable. Defendant offered no evidence.

The rates subsequently established yield earnings per ton-mile of 12.6 mills to Memphis, 13.8 mills to Harvey, 7.6 mills to Boston, 11.2 mills to Chicago, and 8.9 mills to Jersey City.

We find that the rates assailed were unreasonable to the extent that they exceeded the commodity rates contemporaneously in effect on solidified soya-bean and peanut oil, in barrels, in carloads, from Atlanta to the same destinations; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

61 I. C. C.

No. 11680.

KING POWDER COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
RAILROAD COMPANY, ET AL.

Submitted January 8, 1921. Decided April 22, 1921.

Rate on nitrate of soda, in carloads, from Norfolk, Va., and Baltimore, Md., to certain points in central territory found unreasonable. Reasonable rates prescribed for the future and reparation awarded.

F. M. Renshaw for complainants.

Herbert S. Harr, John F. Finerty, and Royal McKenna for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainants are the King Powder Company and the Senior Powder Company, corporations manufacturing powder at Middletown Junction and King's Mills, Ohio, and at Morrow, Ohio, respectively. By complaint filed August 5, 1920, they allege that the rates charged by defendants since June 25, 1918, for the transportation of nitrate of soda, hereinafter called nitrate, in carloads, from Norfolk, Va., and Baltimore, Md., to Middletown Junction, King's Mills, and Morrow were and are unreasonable. We are asked to establish reasonable rates for the future and to award reparation. Rates will be stated in cents per 100 pounds.

The shipments were imported from Chile. Charges were collected on the shipments from Baltimore that moved over the Pennsylvania prior to December 24, 1918, and over the Baltimore & Ohio prior to January 6, 1919, at fifth-class rates of 36 cents and 35.5 cents, respectively, and thereafter at a commodity rate of 28.5 cents. On the shipments from Norfolk prior to February 17, 1919, charges were collected at the fifth-class rate of 34.5 cents, and on later shipments at a commodity rate of 28.5 cents.

The class rates from points in trunk line territory to these destinations are based upon 87 per cent of those from New York, N. Y., 61 I. C. C.

to Chicago, Ill. Baltimore takes a port differential of 3 cents under New York. Prior to June 25, 1918, a joint commodity rate of 18 cents applied on imported nitrate from Baltimore and Norfolk to these destinations. On that date, pursuant to general order No. 28 of the Director General of Railroads, the import rate from Baltimore and Norfolk was canceled and the fifth-class rates became applicable. The latter were superseded by the commodity rates applied to the shipments in controversy. The rate from Baltimore was reduced to 25.5 cents on July 1, 1920, following *General Chemical Co. v. Director General*, 57 I. C. C., 222, and that rate, as increased in the general increase of 1920, is still in effect. The 28.5-cent rate from Norfolk, after participating in that general increase, was reduced to the Baltimore basis on October 10, 1920. During the period of movement defendants maintained joint rates of 25 and 25.5 cents on many kinds of domestic sodiums from Baltimore and Norfolk to these destinations. Complainants contend that the rates charged were and are unreasonable to the extent that they exceeded and exceed those rates.

In *General Chemical Co. v. Director General*, *supra*, we found unreasonable the commodity rate of 36 cents on imported nitrate in carloads from New York to Hegewisch, Ill., a 100 per cent point, to the extent that it exceeded 33 cents and awarded reparation to that basis. We said:

While we have not before us the base rate between New York and Chicago, the rate which we here find reasonable between New York and Hegewisch, a Chicago rate point, may be a proper base rate with relation to which rates to other points in central territory should be made.

A base rate of 33 cents from New York to Chicago would amount to 28.5 cents at 87 per cent points, and after deducting the usual 3-cent port differential of Baltimore under New York would result in a rate of 25.5 cents.

Defendants appeared at the hearing but offered no evidence.

Upon the record in this case, and following *General Chemical Co. v. Director General*, *supra*, we find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded and exceed 87 per cent of the contemporaneous rate from New York, N. Y., to Chicago, Ill., less 3 cents per 100 pounds; that shipments were made as described and that complainants paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice. An appropriate order will be entered.

61 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1278.
FRESH AND SALTED MEATS BETWEEN POINTS IN
FLORIDA.

Submitted March 11, 1921. Decided April 22, 1921.

1. Proposed cancellation of proportional commodity rate of 27 cents per 100 pounds on fresh meats, in carloads, from Jacksonville and Florida Transfer, Fla., to Tampa and other points in Florida, applicable on shipments originating in western territory, and application of proportional fourth-class rate of 50 cents, found not justified. The other items under suspension found justified.
2. An increase in such proportional commodity rate not to exceed 39.5 cents found justified.
3. Suspended schedules ordered canceled without prejudice to the publication of schedules in conformity with the findings herein.

Frank W. Gwathmey for Atlantic Coast Line Railroad Company and Seaboard Air Line Railway Company.

Paul E. Blanchard for Armour & Company; *R. D. Rynder* for Swift & Company; and *Nuel D. Belnap* for Morris & Company and Wilson & Company, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to become effective January 10, 1921, respondents proposed to cancel their proportional commodity rates on fresh meats, including dressed poultry, and on salted meats, in straight and mixed carloads, from Jacksonville and Florida Transfer, Fla., to Tampa, Port Tampa, Port Tampa City, Ybor City, and Boulevard, Fla., known as the Tampa group, applicable on shipments originating at points in Alabama, Mississippi, Tennessee, Kentucky, the greater part of Ohio, and states north and west thereof, which we will term western territory, and to apply in lieu thereof proportional class rates. Upon protest of Armour & Company, Swift & Company, Morris & Company, and Wilson & Company the operation of the schedules was suspended to June 9, 1921.

The short-line distance from Jacksonville to Tampa is 212 miles, and to other points in the Tampa group it ranges from 211 to 248 miles. The present rates are 11.5 cents on salted meats and 27 cents on fresh meats, minimum 24,000 pounds. Throughout this report

rates are stated in amounts per 100 pounds. The proposed rates are class B, 11.5 cents, minimum 30,000 pounds, on salted meats, and fourth class, 50 cents, minimum 21,000 pounds, on fresh meats. Protestants do not object to the application of the class-rate basis on salted meats, but contend that the proposed increased rates on fresh meats are not justified.

Packing-house products have long been rated class B in the southern classification. The proportional class-B rate from Jacksonville to Tampa was formerly 15 cents. Several years ago it was reduced to 7 cents on traffic which might reasonably be expected to move by water from certain western and southern states via New Orleans or Mobile. The 15-cent rate was continued on other traffic. These 7-cent and 15-cent class-B rates, increased under general order No. 28 of the Director General of Railroads and our decision of July 29, 1920, are now 11.5 and 24 cents, respectively. Prior to April 1, 1904, the classification provided that rates on fresh meats to southern common and basing points would be 10 cents over and to other points 20 cents over class-B rates. Effective April 1, 1904, the rating on fresh meats became fourth class, and about the same time commodity rates were established from Ohio and Mississippi river crossings to points in southern territory, including Jacksonville, 10 cents over the class-B rates. The percentage increases under general order No. 28 increased this differential to 12.5 cents, and under our decision of July 29, 1920, it became 15.5 cents.

Rates to and from points in Florida are generally made on the basis of the combination of the local or proportional rates to and from Jacksonville. The proportional commodity rate in issue was established in 1900 on the basis of 10 cents over the proportional class-B rate of 7 cents. This 17-cent rate was increased to 21.5 cents under general order No. 28 and to 27 cents under our decision of July 29, 1920. On fresh meats not originating in western territory the proportional rate applicable from Jacksonville to Tampa is the fourth-class rate of 50 cents.

Respondents contend that the 27-cent rate on fresh meats and the 11.5-cent class-B rate to which it is related are unduly low and that the rates generally have been depressed by potential water competition. They contend that the same proportional rates from Jacksonville to Tampa should apply on eastern and western traffic. The present rates are much lower than those to intermediate points, or than the local distance rates prescribed by the Florida commission. While there is a substantial movement of fresh meats from western territory to Tampa, only an occasional shipment moves to other points south of Jacksonville. The maintenance of higher proportional rates on traffic originating in eastern territory is said to have

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given rise to complaints from packing plants situated therein. The bulk of the movement of fresh meats to Tampa is from western territory.

Respondents compare the proportional commodity and class rates on fresh meats from Jacksonville to Tampa with local rates between points in the southeast and other territories; with proportional rates from Virginia cities to points in Carolina territory, applicable on shipments originating in the west; with rates from Ohio River crossings, Nashville and Memphis, Tenn., to points in southeastern and Mississippi Valley territories, applicable on shipments originating beyond the Ohio River; and with rates from Memphis and Vicksburg, Miss., and New Orleans, La., to points in Mississippi Valley territory, applicable on shipments originating in Texas and Oklahoma. From these comparisons it appears that for corresponding distances the present rate is much lower and the proposed rate would be, generally speaking, as low as or lower than the rates with which comparison is made. Respondents assert that rates in Florida might reasonably be higher than in other parts of the southeast, because the traffic density is less in that state.

Respondents also contend that the rates from the Ohio and Mississippi river crossings to Jacksonville, which constitute factors of the through rates from most points in western territory to Tampa, are depressed by water competition. It appears from exhibits introduced by them that the rates on fresh meats and other packing-house products from Louisville, Ky., to Jacksonville are substantially lower than to intermediate points such as Albany and Valdosta, Ga., and are generally the same as to Atlanta, Ga., over 300 miles less distant. They are but slightly higher than to Birmingham, Ala., almost 400 miles less distant. The present through rates to Tampa are in fact lower than to Albany and Valdosta. In *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, the carriers were authorized to maintain rates from certain Ohio and Mississippi river crossings to Jacksonville and other south Atlantic ports lower than to intermediate points.

The present through combination rates and the distances from the principal points in western territory from which fresh meats are shipped by protestants to Tampa are shown as follows: Chicago, Ill., 1,300 miles, \$1.365; East St. Louis, Ill., 1,131 miles, \$1.27; Indianapolis, Ind., 1,151 miles, \$1.27; Kansas City, Kans., 1,382 miles, \$1.395; and North Fort Worth, Tex., 1,237 miles, \$1.34. Increasing the rates beyond Jacksonville as proposed would result in an increase of 23 cents in each of these through rates.

Respondents compare the present rates from Louisville and Nashville to Tampa, and those which would become effective under the 61 I. C. C.

suspended schedules, with the distance rates prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, for application from Fort Worth, Tex., Oklahoma City, Okla., and Wichita, Kans., plus the subsequent general increases. They also make comparison with rates from packing-house points in the southeast to Key West, Fla., from Baltimore, Md., to points in the southeast, from Chicago and East St. Louis to points in Carolina and southeastern territories, from Kansas City and Fort Worth to points in the southeast, and from Ottumwa, Iowa, and Sioux Falls, S. Dak., to points in Oklahoma. These comparisons indicate that the present through rates to Tampa generally are substantially lower, distance considered, and that the rates here proposed would result in through rates generally as low as or lower than the rates cited for comparison. The resulting through rates, in many instances, would be higher than the rates from Chicago, East St. Louis, Kansas City, and Fort Worth to points in the southeast, particularly the larger cities.

From exhibits introduced by respondents both the present and proposed through rates on fresh meats from various packing-house points in western territory and from Ohio River crossings to Tampa, appear in general to be as low as or lower than the rates on citrus fruit, vegetables, and other commodities from Florida points in the reverse direction. Fresh meats are shipped to Tampa in privately owned refrigerator cars upon which the carriers pay mileage, and fruit and vegetables from Florida also move in refrigerator equipment. Respondents claim that the latter commodities can be transported with less expense because they move in larger volume than do fresh meats.

The validity of the comparisons submitted by respondents is impaired, since many of them compare the proportional rates from Jacksonville to Tampa with local rates not used as factors of through rates; and because of the doubt whether carload shipments move under many of the rates cited. Protestants claim that many of such rates, particularly those to Carolina territory, are class rates and are too high; and they assert that the transportation conditions surrounding the movement of many commodities used in such comparisons are not similar to those affecting fresh meats.

The proportional commodity rate which had been in effect many years was increased 25 per cent under general order No. 28 and the resulting rate was again increased 25 per cent under our order of July 29, 1920. The increase now proposed would amount to 85 per cent and would result in a total increase of approximately 200 per cent over the rate in effect prior to June 25, 1918.

Protestants urge that the present spread of 15.5 cents between the proportional class-B rate and the proportional commodity rate on

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fresh meats is in accordance with the general southeastern adjustment. It is their contention that in *Investigation of Alleged Unreasonable Rates on Meats, supra*, and in the *Eastern Live-Stock Case*, 36 I. C. C., 675, we approved rates on fresh meats which were 120 per cent and 147 per cent, respectively, of the rates on packing-house products; that the spread between the class-B rate and the proposed rate on fresh meats is 38.5 cents, and the proposed rate on fresh meats 434 per cent of that on packing-house products. They estimate that under the present rates, based on minimum weights, the revenue per car on fresh meats is 188 per cent of the corresponding revenue on packing-house products, and under the proposed rates it would be 804 per cent. Fresh meats and packing-house products ordinarily move to this territory in mixed carloads. Protestants therefore conclude that no transportation reasons justify rates that produce more revenue per car of fresh meats than of packing-house products. It appears, however, that protestants ship both fresh meats and packing-house products, and it is not claimed that the increase in the spread between the rates on those commodities will be unjustly discriminatory or unduly prejudicial to them.

Protestants compare the present rate on fresh meats from Jacksonville to Tampa with lower proportional commodity rates from and to the same points on beverages, green fruits and vegetables, and bananas, and with the slightly higher proportional commodity rate from Tampa to Jacksonville on fresh fish. Respondents state that they intend to cancel the proportional commodity rates on fresh fish and apply higher class rates.

Protestants produced evidence to show that the car-mile earnings under the present rates on fresh meats from East St. Louis are 1.4 cents higher to Tampa than to Jacksonville, and that under the proposed rates they would be 5 cents higher to Tampa than to Jacksonville; and also that where the distances from Cincinnati, Ohio, to Jacksonville and certain other points in the southeast exceed the distances to Nashville and Chattanooga by 277 to 505 miles, the rates to the farther distant points exceed the rates to the less distant points by 10.5 to 21.5 cents. They argue that since the distance from Jacksonville to Tampa is from 16 to 20 per cent of the distances from the principal points of origin in western territory to Tampa, the proportional rate from Jacksonville to Tampa should not be more than 16 to 20 per cent of the through rates, which now range from \$1.27 to \$1.395.

Their comparisons between the rates and ton-mile earnings on fresh meats from Chicago, East St. Louis, and Indianapolis to Tampa, and the rates and earnings on certain fruits and vegetables between the same points in the reverse direction, show the ton-mile

earnings on fresh meats under the proposed rates to be higher than on citrus fruits, pineapples, cabbage, and potatoes, but lower than on celery and lettuce. They also show the car-mile earnings on fresh meats from Chicago and East St. Louis to Tampa to be higher under the present rates than on beverages, apples, and certain vegetables from and to the same points. The earnings under the present rates on fresh meats from the principal points of origin in western territory to Tampa range from 20.19 to 22.46 mills per ton-mile, and from 21.78 to 23.86 cents per car-mile based on a carload weight of 21,000 pounds to Jacksonville and the minimum weight of 24,000 pounds beyond. Under the proposed rates the earnings would be from 23.52 to 26.53 mills per ton-mile, and from 24.69 to 27.85 cents per car-mile based on a carload weight of 21,000 pounds.

Respondents, while admitting that the spread between the present class-B proportional rate on packing-house products and the proportional fourth-class rate which it is proposed to apply on fresh meats would be too great, state that they will eventually increase the proportional class-B rate so as to restore the present spread of 15.5 cents. The present rate on fresh meats from East St. Louis, a typical point in western territory, to Tampa is 134 per cent, and under the suspended schedules would be 158 per cent of the class-B rate. The proportional rate of 39.5 cents on fresh meats from Jacksonville to Tampa, or 15.5 cents higher than the 24-cent proportional class-B rate for that haul, applicable on shipments of packing-house products from eastern territory, which latter rate respondents apparently believe to be reasonable, would result in a through rate from East St. Louis to Tampa of \$1.395, or 147 per cent of the class-B rate of 95 cents applicable on packing-house products from and to the same points.

Upon consideration of the whole record we find that respondents have not justified the proposed increased rate on fresh meats, but that they have justified an increase in the present rate to an amount not exceeding 39.5 cents, and have also justified the other items under suspension.

Respondents will be required to cancel the schedules under suspension, without prejudice, however, to the filing of schedules establishing, on not less than five days' notice, rates in conformity with our findings herein.

An appropriate order will be entered.

61 I. C. C.

No. 10948.

SOUTHWEST COTTON COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ARIZONA EASTERN
RAILROAD COMPANY, ET AL.

Submitted October 16, 1920. Decided April 22, 1921.

Rates applicable on cotton, in gin-compressed bales not subject to compression in transit, in carloads, from points in Arizona to Chester, Pa., New Bedford, Mass., and other eastern milling points found unreasonable. Reparation awarded.

Guy P. Nevitt for complainant.

A. A. Betts, D. F. Johnson, and F. A. Jones for Arizona Corporation Commission; and *Roland Johnston* for Traffic Bureau of the Phoenix Chamber of Commerce, interveners.

H. C. Hallmark, Edward Hart, jr., G. H. Baker, F. B. Austin, and E. W. Camp for defendants; and *John F. Finerty, Royal T. McKenna, Alex. M. Bull, and John C. Brooke* for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

EASTMAN, Commissioner:

Complainant is a corporation engaged in growing cotton in the vicinity of Phoenix, Ariz. By complaint filed October 10, 1919, it alleges that defendants' carload rates on cotton in gin-compressed bales not subject to compression in transit, shipped from points in the Salt River Valley of Arizona to points in Massachusetts, Connecticut, Rhode Island, and Pennsylvania have been since June 25, 1918, and are unjust, unreasonable, and unduly prejudicial. Reparation and just and reasonable rates for the future are sought. The Arizona Corporation Commission and the Traffic Bureau of the Phoenix Chamber of Commerce intervened in support of the complaint.

Phoenix is served by a branch line of the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, and by the Arizona East-
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ern, which connects with the main line of the Southern Pacific at Maricopa, Ariz. The other points of origin, Glendale, Mesa, Tempe, Chandler, and Tolleson, are all in Arizona within a short distance of Phoenix and on the Arizona Eastern, with the exception of Glendale, which is on the Phoenix branch of the Santa Fe. The shipments from Glendale and some from Phoenix moved over the Santa Fe and its connections, and the remainder from Phoenix and all from the other points of origin moved over the Arizona Eastern and the Southern Pacific and its connections to Chester, Pa.; Dayville and Putnam, Conn.; Darlington and Warren, R. I.; North Adams and New Bedford, Mass. For convenience the points of origin will be referred to as the Phoenix group. Chester is a Philadelphia, Pa., rate point and the other destinations take the same rates as Boston, Mass. Rates are stated herein in amounts per 100 pounds, and those termed "present rates" do not include the general increase authorized by us on July 29, 1920.

The shipments consisted of long-staple cotton baled at the gin presses to a density of from 10 to 12 pounds per cubic foot. It is said that further compression by machinery to 22.5 pounds, as required in cotton tariffs generally, is injurious to long-staple, although not to short-staple, cotton, and complainant for this reason prefers to have its cotton move through to destination without such compression. It indicated upon the bills of lading covering most of the shipments that the contents were "not to be compressed in transit," but the bill of lading for one lot destined to a certain mill which did not have ample warehouse facilities was not so indorsed and the cotton was compressed by the carrier; and in the case of one or two cars shipped in 1917 the indorsement "not to be compressed in transit" was overlooked by the carrier and the cotton was compressed. These shipments were, therefore, entitled to the lower rates on cotton compressed in transit and the charges should be adjusted on this basis. They will not be further considered.

The rates from Phoenix group applicable on the traffic in question, hereinafter termed uncompressed cotton, and on cotton compressed at point of origin or in transit to a density of 22.5 pounds, hereinafter called compressed and transit cotton, respectively, are shown in the following table:

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Effective date.	Uncompressed. ¹	Compressed. ²	Transit. ³
To Boston:			
June 24, 1918.....	\$2.135	\$1.265	\$1.415
June 25, 1918.....	2.285	1.415	1.565
Feb. 15, 1919.....	2.53	1.415	1.565
Apr. 19, 1919.....	2.285	1.415	1.565
Dec. 31, 1919.....	1.835	1.415	1.565
To Philadelphia:			
June 24, 1918.....	2.055	1.195	1.345
June 25, 1918.....	2.205	1.345	1.495
Feb. 15, 1919.....	2.43	1.345	1.495
Apr. 19, 1919.....	2.285	1.345	1.495
Dec. 31, 1919.....	1.765	1.345	1.495

¹ Prior to June 25, 1918, the rates from Tolleson were 3 cents per 100 pounds over the rates from the Phoenix group. On that date the differential was increased to 4 cents and, effective March 20, 1919, it was eliminated.

² Joint rates, minimum 20,000 pounds on uncompressed cotton, also on compressed and transit cotton prior to June 25, 1918, on which date the minimum applicable on compressed and transit cotton was increased to 30,000 pounds.

³ Commodity rate of \$1.15, minimum 20,000 pounds, to East St. Louis, Ill., plus second-class any-quantity rates beyond of 96.5 cents to Boston and 90.5 cents to Philadelphia.

⁴ Increase of 15 cents in the through rate in effect June 24, 1918, authorized in supplement #2, to Counties' I. C. C. No. 1028, issued under general order No. 28, which provided in note B under "Application of Rates," that "When the total charges on a through shipment of any of the commodities specified below (including cotton) are constructed on combination of separately established rates applying to and from junction points, first determine the through combination of rates in effect on June 24, 1918, and then increase such through combination of rates by the amounts set opposite each such commodity." In the case of cotton this amount was 15 cents.

⁵ Combination of commodity rate of \$1.30 to East St. Louis, minimum 20,000 pounds, plus second-class any-quantity rates beyond of \$1.23 to Boston and \$1.13 to Philadelphia, made applicable under Morris' I. C. C. U. S., 1, which provided that where a separately established class-rate factor, plus a separately established commodity-rate factor is used in constructing the combination rate, the through rate to apply is the sum of the factors.

Some of the shipments appear to have been undercharged and others overcharged.

Complainant and the Arizona Corporation Commission, intervener, hereinafter called complainants, contend that the rates assailed should not exceed the rates on transit and compressed cotton by more than 10 and 20 cents per 100 pounds, respectively. They state that these relationships have obtained for years in the cotton rates of the southwestern lines from points in Texas. They were in effect approved in *Louisiana Cotton*, 46 I. C. C., 451, for application from points in Louisiana to various Mississippi River crossings and points in defined territories east of the Mississippi River. In that case we said that the 10-cent spread between the rates on compressed and transit cotton represented the then cost to the carrier of compression, so that the net yield to the carrier from the rates on these two grades was the same; and the 20-cent spread between uncompressed and compressed cotton was found justified on the ground that the former requires approximately twice the car space necessary for the latter.

The cotton grown in the south, including Texas, usually moves in small lots an average distance of about 100 miles from the plantation to a compress point, where it is compressed at the carrier's expense and forwarded in full cars to eastern milling points at the rate applicable on transit cotton from the point of origin to final destination. As a rule this rate is 10 cents higher than on compressed cot-

ton, the difference representing originally, as above stated, the cost of compression. It appears that the cost has since increased to about 15 cents. Cotton delivered to the carrier with instructions not to compress in transit is generally subject in that territory to the higher first-class any-quantity rates, except the so-called sea-island varieties which move through uncompressed from points along the south Atlantic coast at commodity rates which are higher than, but appear to bear no relation to, the rates on short-staple cotton.

The long-staple cotton grown in Arizona resembles sea-island cotton. It has more varied uses than the short-staple cotton produced in the south and its value is higher. Moreover, the conditions surrounding its transportation are dissimilar, in that, as above stated, it generally moves through uncompressed in carloads from points of origin to destinations in the east. While the density of the average bale when it leaves the gin is from 10 to 12 pounds in Arizona as compared with about 7.5 or 8 pounds in the south, the average carload of Arizona cotton weighs considerably less, for the reason that the cotton in the south is usually compressed before shipment or at a compress point en route to a density of at least 22.5 pounds. The conservation of equipment resulting from such compression is said to more than offset the cost thereof to the carrier.

In *Eastbound Transcontinental Cotton Rates*, 34 I. C. C., 248, the history of the origin and development of cotton growing in southern California and Arizona is detailed. As we there observed, the rates established eastbound to St. Louis, New Orleans, and Galveston were originally made the same as those then in effect from Texas and Louisiana cotton-producing points to Pacific coast terminals, the assumption being that the circumstances and conditions surrounding the transportation were the same in both directions. We found, however, that the conditions eastbound were not so favorable as those obtaining westbound and that the difference justified a higher rate eastbound. In that case the carriers were proposing to cancel a rate of 95 cents on transit cotton from southern California and Arizona producing points to the destinations above mentioned, and to substitute in lieu thereof rates of \$1.15 and 85 cents on uncompressed and compressed cotton, respectively. We found that this proposal had not been justified, but that it would be reasonable to increase the rate on transit cotton to \$1.05. It will be noted that this rate was 10 cents less and 20 cents more than the rates proposed on uncompressed and compressed cotton, respectively, but it does not appear that the question of relationship was then considered. The present cotton rates eastbound are lower than those in the opposite direction.

In the official classification the any-quantity rating on cotton, n. o. i. b. n., in bags or bales not compressed, is second class, and the

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similar rating on cotton in bales compressed is fourth class. Defendants claim that this is the proper relation. However, the southern classification applies first class to cotton of both descriptions, and the western applies first class when in bags or bales uncompressed and second class when in compressed bales. None of these classifications provides any carload ratings, and where cotton moves in any considerable volume commodity rates are usually in effect.

Complainants stress the contention that the present blanket rates on uncompressed cotton, extending from Fresno, Calif., to points in Arizona and New Mexico, should be broken and graded back so as to give points like Phoenix, which is about 615 miles nearer the eastern milling points than Fresno, the benefit of their geographical location. They ask the establishment of a joint carload rate of \$1.605 from Phoenix to Philadelphia, and suggest a rate of \$1.715 from Fresno, instead of the present rates of \$1.765 from both points. They refer to decisions in which we have disapproved the blanketing of rates for distances less than that from Fresno to Phoenix; and show the manner in which the westbound transcontinental rates on compressed cotton from points of origin between New York and Chicago are split into groups averaging about 250 miles each.

In support of the rate sought complainants introduced various comparisons which indicate that the rates assailed exceeded the rates eastbound on various commodities, including articles made of cotton, and averaged about the same as other commodity rates, including that on cotton clothing in the opposite direction. Comparisons of this sort are not very helpful, especially as many of the comparative rates cited are transcontinental rates which may have been affected by water competition. Nor does it follow because the same rate applies from Phoenix as from Fresno, 615 miles farther distant from the destination territory, that the Phoenix rate is unlawful. No competition between the Fresno cotton and the Arizona cotton was shown. Attention is called by both complainants and defendants to the rates on wool. There appears to be no close analogy between wool and cotton, and defendants expressly disclaim any contention that there is or should be any definite relation between the rates on these two commodities.

The present record does not afford a basis, and no necessity appears for determining in this case what the precise relationship should be between uncompressed, transit, and compressed cotton. Complainant is interested only in the rates on the uncompressed. However, the difference prior to December 31, 1919, between the through rates on uncompressed and compressed cotton from and to the points concerned appears to have been warranted by no facts of record. It was due principally to the absence beyond St. Louis

of a carload rate on uncompressed cotton, and the consequent application from that point of the second-class any-quantity rates, prior to April 19, 1919. Thereafter joint commodity rates were established, but until December 31, 1919, these were based on the carload commodity rate to St. Louis and the second-class any-quantity rates beyond, in effect prior to June 25, 1918, plus 15 cents, the increase on cotton authorized under general order No. 28 of the Director General of Railroads. The fact that the shipments of the Southwest Cotton Company during the 1918-1919 season, which aggregated 10,928,903 pounds, loaded on the average approximately 31,000 pounds per car, and during the preceding season over 27,000 pounds, entitled complainant to reasonable through carload rates. The present joint commodity rates exceed by 27 cents the corresponding rates on transit cotton, and by 42 cents the corresponding rates on compressed cotton. They appear to be reasonably related to the commodity rates on uncompressed cotton voluntarily established and long maintained to St. Louis. Based on the average loading of 31,000 pounds during the 1918-1919 season, they yield per car earnings of \$568.85 to Boston and \$547.15 to Philadelphia.

We find that the applicable rates were not unduly prejudicial, but that they were unreasonable to the extent that they exceeded \$1.765 per 100 pounds to Chester, Pa., and \$1.835 per 100 pounds, minimum 24,000 pounds, to the destinations in Connecticut, Rhode Island, and Massachusetts; that complainant Southwest Cotton Company made the shipments as described and bore the charges thereon; that it has been damaged thereby in the amount that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. It should comply with rule V of the Rules of Practice. Collection of the outstanding undercharges should be waived.

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No. 11252.
VIRGINIA-CAROLINA CHEMICAL COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted December 22, 1920. Decided April 23, 1921.

Rates on sulphuric acid, in tank-car loads, from Charlotte, N. C., to Greenville, S. C., and Selma, N. C., during federal control, found unreasonable. Reparation awarded.

Charles E. Cotterill and T. A. Bosley for complainant.

Alex. M. Bull, John C. Brooke, and John F. Finerty for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner and oral argument was had. We have reached conclusions differing from those recommended by him.

Complainant, a corporation, manufactures fertilizer at Selma, N. C., and Greenville, S. C. By complaint filed February 24, 1920, it alleges that the sixth-class rates charged on 15 tank-car loads of sulphuric acid shipped between December 5, 1918, and February 24, 1919, inclusive, from Charlotte, N. C., to Greenville, and intrastate to Selma, were unjust and unreasonable. Reparation only is asked. Rates will be stated in cents per 100 pounds unless otherwise specified.

The shipments moved over the Southern, 10 to Greenville, 108 miles, and 5 to Selma, 202 miles. Charges were collected at the applicable sixth-class rates of 26.5 and 27.5 cents, respectively. Effective February 28, 1919, commodity rates of \$2.20 and \$2.30 per net ton were established to Greenville and Selma, respectively.

The rates assailed yielded 49.07 and 27.22 mills per ton-mile and, based on 98,356 pounds, the average loading of complainant's shipments, \$2.41 and \$1.339 per car-mile to Greenville and Selma, respectively. The earnings under the subsequently established rates would have been 20.37 and 11.38 mills per ton-mile; and \$1 and 56 cents per car-mile.

Complainant contends that between points in the southern territory sulphuric acid in tank cars generally moves on commodity 61 I. C. C.

rates based upon the so-called unpublished southern scale, and states that the subsequently established rates are based upon that scale plus the 25 per cent increase under general order No. 28 of the Director General. This scale was based upon the rates prescribed on sulphuric acid from Copperhill, Tenn., to certain points in the Carolinas, Georgia, and Florida in *International Agricultural Corporation v. L. & N. R. R. Co.*, 22 I. C. C., 488, in which, for example, we required the reduction of the rate of \$4 per net ton from Copperhill to Greenville, 336 miles, to \$2.70, which yielded 8 mills per ton-mile.

Complainant relies principally upon the following cases, in which we prescribed or authorized rates fairly in line with the rate fixed in the case above cited: *Sulphuric Acid from New Orleans, La.*, 42 I. C. C., 200, *Du Pont de Nemours Powder Co. v. P., B. & W. R. R. Co.*, 51 I. C. C., 477, *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 52 I. C. C., 423, *Aetna Explosives Co. v. N. O. & N. E. R. R. Co.*, 53 I. C. C., 511, *Steel Cities Chemical Co. v. Director General*, 56 I. C. C., 723. The rates assailed are high compared with rates prescribed or authorized in those cases.

Defendant observes that we approved rates from Savannah, Ga., to two points in Pennsylvania which "were actually higher than the sixth-class rates." *Aetna Explosives Co. v. S. A. L. Ry. Co.*, 51 I. C. C., 674. The rate of \$6.90 per net ton for 947 miles, yielding 7.28 mills per ton-mile, therein approved from Savannah to Emporium, is in striking contrast with the rate assailed to Greenville, which is equivalent to \$5.80 per net ton for 108 miles, and yields, as stated, 49.07 mills per ton-mile.

Defendant quotes at length from *Du Pont de Nemours Powder Co. v. Director General*, 57 I. C. C., 54, with respect to the basis of rates on sulphuric acid in the southeast. In our supplemental report in that case, 58 I. C. C., 146, we found, for example, that the rate on sulphuric acid from Jacksonville, Fla., to Hopewell, Va., was unreasonable to the extent that it exceeded \$4.80 per net ton for 626 miles, yielding 7.66 mills per ton-mile.

Defendant further contends that the movement of the 15 cars from Charlotte to Greenville and Selma was a sporadic or isolated movement and that the application of the sixth-class rates under the circumstances was not unreasonable. While it does not appear of record that sulphuric acid moved from and to these particular points prior to December 5, 1918, defendant does not contend that acid was not moving from the plant at Charlotte to other points in the same general territory. Complainant cites a commodity rate of \$2.90 per net ton from Charlotte to Wilmington, N. C., much farther distant than Selma, which was in effect prior to this movement.

We find that the rates assailed were unreasonable to the extent that they exceeded \$2.20 and \$2.30 per net ton to Greenville and Selma, respectively; that shipments were made as described; that complainant paid and bore the charges thereon and has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 11211.

S. J. HAWKINS, DOING BUSINESS UNDER THE NAME OF
RUPERT MILLING COMPANY, AND S. J. HAWKINS

v.

OREGON SHORT LINE RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted October 1, 1920. Decided April 13, 1921.

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1. Rates on potatoes from Rupert, Idaho, to Albuquerque, N. Mex., and on alfalfa meal from Rupert to points in Utah, Oregon, Nebraska, Missouri, Illinois, Tennessee, New York, and Virginia not found unreasonable.
 2. Rate on secondhand burlap bags from San Francisco, Calif., to Rupert found unreasonable. Reparation awarded.

S. J. Hawkins for complainant.

J. M. Souby for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, Commissioner:

This proceeding was made the subject of a proposed report. Complainant is an individual doing business under the name of Rupert Milling Company. By complaint, it is alleged that the rates charged on two carloads of potatoes, shipped in February, 1919, from Rupert, Idaho, to Albuquerque, N. Mex., and on 6,100 pounds of secondhand bags, in bales, shipped in February, 1919, from San Francisco, Calif., to Rupert; and that the rates on alfalfa meal from Rupert to points in Utah, Oregon, Nebraska, Missouri, Illinois, Tennessee, New York, and Virginia, are, in each instance, unjust and unreasonable in violation of section 1 of the interstate commerce act and section 10 of the federal control act. Reasonable rates for the future and reparation are sought. Rates are stated in cents per 100 pounds.

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The rate charged on the shipments of potatoes from Rupert to Albuquerque was the legally applicable rate of \$1.065 and the distance 1,246 miles. Practically no evidence as to the reasonableness of the rate was introduced by complainant; but he expressed the opinion, without comparison of rates, that the rate should not have exceeded 60 cents because of lower rates to points in Kansas and Oklahoma.

For defendants it is stated that the movement from Idaho points to New Mexico points is very light; and that the limited requirements of this section are supplied from Colorado. It is further stated that the relative density of population in New Mexico is much lower than in Colorado, Kansas, and Oklahoma, and transportation conditions very different.

While from defendants' exhibits it appears that rates to Kansas and Oklahoma points are lower than to Albuquerque, the record is not such as to warrant a finding of unreasonableness.

The shipment of secondhand bags from San Francisco to Rupert weighed 6,100 pounds and moved March 5, 1919, as a less-than-carload shipment, routed via the Southern Pacific to Portland, Oreg., and Oregon-Washington Railroad & Navigation Company and Oregon Short Line to destination. The testimony shows that freight charges were assessed in the amount of \$117.74, based upon a third-class local rate to Portland of 51.5 cents and the third-class rate of \$1.415 from Portland to Rupert, making a through rate of \$1.93. A copy of the expense bill submitted since the hearing shows charges collected in the amount of \$128.10. Practically no evidence was introduced by complainant, but it was his judgment that the rate was too high in that secondhand bags, being of low value, should be accorded low rates. The secondhand bags were intended to be used in place of new bags, which complainant would have had to purchase in either Portland, Oreg., or St. Louis, Mo., but the rates at which they would have moved are not shown.

The defendants show that an investigation made of this shipment developed the fact that instead of bales, the shipment was actually composed of bundles of burlap bags, and that under western classification, burlap bags, in less than carloads, in bundles, take second class, and in bales third class.

The complainant stated that the bags were compressed in a press and bound with wire. The defendants, however, offer the affidavit of their agent who loaded and checked the shipment that the bags were piled in uniform piles, and that each pile was then bound by heavy cord 10 inches from each end, that the piles were then presented for shipment, and that the bill of lading was made out describing the shipment as 50 bundles of burlap bags, secondhand.

The bill of lading, also filed as a part of the affidavit, supports it as to the description of the shipment.

In justification of the applicable rates the defendants stated that the rate from San Francisco to Portland was affected by the water competition via the Pacific Ocean, while the factors beyond Portland are the class rates ordered by the Commission in *Portland Chamber of Commerce v. O. R. R. & N. Co.*, 21 I. C. C., 640, as increased by Director General's order No. 28.

There was at the time of the movement a combination of 51.5 cents to Portland; \$1.025 from Portland to Huntington, Oreg., and 47.5 cents from Huntington to Rupert, applicable on burlap bags in bundles. There was also a commodity rate of 26.5 cents between San Francisco and Portland applicable on shipments destined to points on the Oregon-Washington Railway & Navigation Company, but not applicable when destined to points on the Oregon Short Line. This rate in connection with the commodity rate of \$1.025 from Portland to Huntington made a rate to Huntington of \$1.29. As above shown, the rate from Huntington to Rupert was 47.5 cents, one-half of the fourth-class rate. As the shipment was destined to Rupert, a point on the Oregon Short Line, the proportional rate from San Francisco to Portland was not a factor which could be used in determining the lowest combination. Nevertheless the rate to Huntington involving the use of the proportional factor being \$1.29 and the rate from Huntington being 47.5 cents, indicates that any rate in excess of \$1.765, the sum of these rates, was unreasonable. Since that time some of the factors of this combination have been canceled, and the record is insufficient to warrant the prescribing of a rate for the future.

In support of his allegation concerning the alfalfa-meal rates from Rupert to points in the several states mentioned above, which are alleged to be unreasonable as compared with rates from Colorado, Montana, and Wyoming, the complainant offered no comparison of rates from Rupert or from points in Colorado, Montana, or Wyoming. His allegation seems to be based upon the impression received from talks he has had with millers in those states and from a letter which he received from a jobbing house located at Denver, Colo., written in reply to a solicitation by complainant, offering to sell his meal. This letter spoke of prohibitive freight rates in effect from Rupert to Kansas City, Mo., and indicated to complainant that at the price this jobber was able to buy alfalfa meal in Colorado, he was able to offer same for sale in Kansas City for \$30.30 per ton, under a freight rate of 24 cents and that if the complainant was to meet this price under a freight rate of 53 cents he would have to sell his meal f. o. b. Rupert at \$19.75 per ton, at which price the jobber would be

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willing to take his meal. The letter stated that the price being paid for meal in Colorado was \$25.50 per ton.

The defendants offered statements of rates showing the rates from Rupert on alfalfa as compared with rates on hay, grain, potatoes, apples, and green fruits, from which it does not appear that the rates on alfalfa are out of line. The rate on alfalfa from Rupert to Kansas City is shown to be 51 cents, applicable in connection with the minimum weight of 40,000 pounds for a distance of 1,329 miles, yielding per car revenue of \$204, per car-mile revenue of 16.33 cents, and per ton-mile revenue of 8.166 mills.

From a consideration of the whole record we are of the opinion and find that the rates assailed on potatoes and alfalfa meal are not shown to be unreasonable; but that the rate assessed on secondhand burlap bags was unreasonable to the extent that it exceeded \$1.765; that complainant made the shipment as described and paid the freight charges thereon; that he was damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable, and is entitled to reparation, with interest. In view of the discrepancy between the evidence submitted at the hearing and the showing on the freight bill, the exact amount of reparation due can not be determined on the record. Complainant should comply with rule V of the Rules of Practice.

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INVESTIGATION AND SUSPENSION DOCKET No. 1289.
 SWITCHING BETWEEN INDUSTRIES AND CONNECTING
 LINES AT MASON CITY, IOWA.

Submitted March 21, 1921. Decided April 22, 1921.

Increased switching charges of the respondent at Mason City, Iowa, found not justified. Suspended schedules ordered canceled.

Joyes for respondent.

Henderson and *C. M. Updegraff* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

DIVISION 3:

Schedules filed to become effective January 28, 1921, and March 1, 1921, the Minneapolis & St. Louis Railroad, hereinafter referred to as respondent, proposed to increase from \$2.50 to \$5 per car its switching charges between industries on its line at Mason City, Iowa, and the interchange tracks of connecting lines. Upon protest by E. Decker & Sons, operating a packing plant on respondent's line at Mason City, operation of the schedules was suspended until July 7, 1921. Switching charges will be stated in amounts per car.

The proposed charge would apply on all interchange traffic except that of two industries now subject to switching charges of \$5.50 per car. Respondent serves 18 industries at Mason City; the Chicago & Milwaukee & St. Paul, 86; the Chicago, Rock Island & Pacific, 10; the Chicago Great Western, 9; and the Mason City & Clear Lake, 1. The number served by the Chicago & North Western is not disclosed.

Following *Increased Rates, 1920*, 58 I. C. C., 220, the reciprocal switching charge of \$2 applied generally by carriers at Mason City was increased to \$2.50. On January 20, 1921, the Chicago Great Western further increased its charge to \$5 for interchanging shipments between its connections and three industries on its lines, except that the switching charge of \$2.50 on beets inbound to one of these industries and on traffic to or from the Chicago & North Western and the Chicago, Rock Island & Pacific was not increased.

The rules of the carriers generally provide for the absorption of connecting-line switching charges at Mason City, where the total freight charges are not less than certain prescribed minima. Of the 18 industries served by respondent it appears that protestant alone would be materially affected by the proposed increase. This is due to the fact that protestant receives a considerable portion of its live stock from near-by stations at a total charge for the line haul which yields less than the prescribed minimum revenue after absorption of switching charges. The line-haul charges on shipments from and to the other industries are generally sufficient to allow the absorption of the switching charges.

Respondent connects directly with the Chicago, Milwaukee & St. Paul and the Mason City & Clear Lake at Mason City. The distance to protestant's plant from respondent's point of interchange with the main line of the Chicago, Milwaukee & St. Paul is 10,238 feet; with the Austin branch of that carrier, 8,585 feet; and with the Mason City & Clear Lake, 9,922 feet. During 1920 respondent delivered 3,872 carloads of live stock to protestant, on 1,102 of which it received a line haul, and received from protestants 2,017 carloads of packing-house products, on 1,004 of which it received a line haul. It also delivered 646 carloads of other commodities, but on how many it had a line haul the record does not disclose. During the same year respondent switched 23,499 cars at Mason City and had a line haul on 19,565 of them.

It was testified for respondent that its switching charges at Mason City and other points were originally established without regard to cost of service upon the theory that reciprocal services would be performed by other carriers at correspondingly low charges. The proposed increased charge was published after an investigation had convinced respondent that its switching charge at Mason City was lower than the cost of service.

Respondent shows the following as the principal items of expense in connection with its switching service at Mason City during the year 1920:

Maintenance of way and structures.....	\$20,715.44
Maintenance of equipment (switch-engine repairs).....	5,217.58
Yard conductors and switchmen.....	16,448.84
Engineers and firemen.....	14,415.97
Engine-house expense.....	9,746.30
Water, cost of.....	2,063.27
Fuel, cost of.....	44,072.00
Yardmasters and yard clerks.....	4,538.99
Crossing protection.....	2,405.76
Station service.....	9,256.55
Total.....	128,865.20

These figures are largely based upon estimates rather than upon actual tests, and most of the items necessarily include costs that were arbitrarily allocated. The amount shown for maintenance of way and structures represents two-thirds of the total expenditures on that account at Mason City during 1920. Engine-house expense and the cost of water were apportioned pro rata as between switch engines and other locomotives. The entire expense of yardmasters, 76.5 per cent of the wages paid yard clerks, and two-thirds of the entire expense for crossing protection were assigned to switching service. For station service various percentages were arbitrarily used in allocating the proportion of expense chargeable to switching service. According to respondent's witness the figures given for cost of water are manifestly erroneous.

Based on the total number of 23,499 cars switched, and the computed cost of its switching service, \$128,865.20, respondent asserts that \$5.48 represents the average cost per car of interchange switching. Respondent has assigned too great a proportion of the enumerated expenses to switching service, but this is in some measure offset by the fact that nothing was allowed in its computation for such items as general supervision, personal injuries, claims for loss and damage, interest on the value of the property used, depreciation, and taxes.

Respondent directs attention to the fact that a rate of 2 cents per 100 pounds with a minimum charge of \$7 is provided in its tariffs for movements of carload freight, except certain low-grade commodities, at stations in Iowa, including Mason City, between industries or team tracks on its line and between such industries or team tracks and points of interchange with connecting lines where the entire movement is within the switching limits of the same station. The charges for such a movement on a shipment weighing 40,000 pounds would be \$8. On cement, gravel, sand, and stone the charges for such movements at Mason City, except from connecting lines to industries on respondent's line, are at a rate of 1.5 cents per 100 pounds, with a minimum charge of \$7.

Respondent's switching charge at Albert Lea, Chaska, New Ulm, and St. James, Minn., and Hampton and Grinnell, Iowa, is \$4. No switch engines are maintained at these points and the service is usually performed by road engines. At Des Moines, Iowa, respondent's switching charge is \$4.50 and at Fort Dodge, Iowa, and Keithsburg and Monmouth, Ill., \$4. At Ackley, Estherville, Hedrick, Luverne, Marshalltown, McCallsburg, Montezuma, Sioux Rapids, and Storm Lake, in Iowa, respondent's switching charge is \$2.50. The record does not disclose the operating or traffic conditions under which the service is performed at any of these points.

The evidence for respondent tends to show that its operations during the past two years have been unprofitable. But the figures submitted are of little value in this proceeding.

Protestant submitted an exhibit which indicates that the switching charges on shipments of live stock from points within 40 miles from Mason City are not absorbed by the line-haul carriers and must be paid by it. All the points shown are in Iowa, and the transportation is intrastate. On live stock shipped from Lyle, Minn., to Mason City, 28.6 miles, the freight charges are sufficient to cover absorption of the switching charge.

Respondent concurrently proposed to increase its switching charges at Mason City on intrastate traffic to the same basis as is proposed on interstate traffic, but has postponed the effective date intrastate pending a hearing thereon by the Board of Railroad Commissioners of Iowa.

Protestant's competitors at Cedar Rapids and Ottumwa, Iowa, and Austin, Minn., are required to pay a switching charge of \$2.50. Respondent does not serve any of these points.

We find that respondent has not justified the increased switching charges on interstate traffic at Mason City and will be required to cancel the schedules under suspension. Its charges for switching at that point may be too low but the record affords no sufficient basis for determining what charges would be reasonable.

An appropriate order will be entered.

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No. 11635.

UNITED PAPERBOARD COMPANY, INCORPORATED,

v.

MORRISTOWN & ERIE RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted December 16, 1920. Decided April 23, 1921.

Rate applicable on chipboard, in carloads, from Whippany, N. J., to Jersey City, N. J., during federal control, found unreasonable. Collection of undercharges waived and complaint dismissed.

R. L. Stover for complaint.*W. J. Larrabee* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing chipboard and similar products at New York, N. Y., alleges that the rate charged on 76 carloads of chipboard which moved intrastate from Whippany, N. J., to Communipaw Station, Jersey City, N. J., between June 25 and December 2, 1918, was unreasonable and unduly prejudicial. Reparation only is sought. Rates will be stated in cents per 100 pounds.

The shipments moved as routed by the shipper over the Morristown & Erie, Delaware, Lackawanna & Western, hereinafter called the Lackawanna, and Central of New Jersey, hereinafter called the Central, 94 miles. Charges were collected on the basis of a joint commodity rate of 15 cents filed with the state commission for application on box board. Box board is a general term which includes chipboard. The joint commodity rate on file with us applicable on both intrastate and interstate traffic was 17.5 cents, and the shipments were undercharged 2.5 cents per 100 pounds.

Complainant contends that the shipments should have moved over the Morristown & Erie and the Lackawanna to Hoboken, N. J., thence by lighters of the Central to Jersey City, and by a switch movement of 1.5 miles over the Central to consignee's plant, 36 miles, and that over this route a combination rate of 10.5 or 11 cents would

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have applied. No tariff authority for these rates appears. The combination rate applicable over this route was 16.5 cents.

Complainant compares the rate assailed with rates of 9.5 cents which, it states, were contemporaneously applicable to Jersey City over the Erie and the Lackawanna for Pennsylvania delivery, and urges that the rate for Central delivery should have been no higher. These rates are misquoted by complainant. They were 12 cents over the Erie and 14.5 cents over the Lackawanna.

Defendants' witness testified that the most practical and economical route was used; that the route via Hoboken was impracticable because of the difficulty and expense and the liability of damage to the shipments incident to the transfer from cars to lighters and from lighters to cars; and that at the time when these shipments moved defendants' lighters were being used for export war traffic, and not for domestic traffic.

The shipper's direction in the bills of lading to route the shipments "CRR" authorized movement over a route which would afford the Central a line haul. *Fechheimer Steel & Iron Co. v. P. R. R. Co.*, 51 I. C. C., 183. The lighterage and switching service of the Central from Hoboken is a terminal service, and the shipments were not misrouted.

No substantial evidence was introduced in support of the allegation of undue prejudice.

Defendants' witness testified that, responsive to complainant's request, the Lackawanna established a commodity rate of 12 cents, effective January 9, 1918, which was filed with the state commission, but not with us; and that except from April 8 to 30, inclusive, when through error it was increased to 14 cents, this rate remained in force until increased to 15 cents on June 25, 1918, under authority of general order No. 28 of the Director General of Railroads. The supplement effecting the latter increase was not filed with us. The joint commodity rate of 15 cents was later filed with us and became effective February 15, 1919. Defendants' witness further testified that while the 14-cent rate was in effect complainant made shipments and later filed complaint with the Board of Public Utility Commissioners of New Jersey seeking reparation to the basis of the 12-cent rate; that this was finally agreed upon as a reasonable maximum rate; and that defendants voluntarily made reparation to that basis.

We find that the rate applicable was unreasonable to the extent that it exceeded 15 cents per 100 pounds. Defendants are authorized to waive the undercharges. The complaint will be dismissed.

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No. 10827.

SWIFT LUMBER COMPANY

v.

FERNWOOD & GULF RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted May 15, 1920. Decided April 5, 1921.

Rates on yellow-pine lumber, timber, and lumber products from Knoxo, Miss., a local point on the Fernwood, Columbia & Gulf Railroad, found unduly prejudicial to the extent they exceeded and exceed the blanket basis of rates applicable from the junction of the Fernwood, Columbia & Gulf with the Illinois Central Railroad. Rates not found unreasonable except to certain points in Tennessee. Reparation denied.

L. Palmer for complainant.

Green & Green for Fernwood & Gulf Railroad Company.

George B. Auburtin for New Orleans Great Northern Railroad Company.

A. P. Humburg and *J. L. Sheppard* for defendants.

REPORT OF THE COMMISSION.

EASTMAN, Commissioner:

Complainant, a corporation engaged in the manufacture of lumber and lumber products at Knoxo, Miss., ships its product over the Fernwood, Columbia & Gulf Railroad, formerly the Fernwood & Gulf, to various interstate destinations reached by trunk line connections of that carrier. By complaint, filed July 2, 1919, it alleges that the carload rates on yellow-pine lumber, timber, and lumber products to points in Louisiana, Tennessee, Kentucky, Wisconsin, Minnesota, Iowa, and Missouri, and to points in central and eastern trunk line territories have been and are unreasonable and unjust; and that these rates, as compared with rates on the same commodities from competing points in the territory surrounding Knoxo, have been and are in violation of sections 1, 2, and 3 of the act to regulate commerce. Reparation is asked on shipments made since January 1, 1919. Rates are stated herein in cents per 100 pounds, and do not include the general increase authorized by us on July 29, 1920.

At the hearing the allegations concerning rates to points in Louisiana were abandoned. Rates to Ohio River crossings are of primary importance, as the rates to points beyond are based upon the Ohio River combination.

The complaint rests upon the theory that a rate blanket on yellow-pine lumber covers the territory extending south from the Alabama & Vicksburg to the Gulf and east from the Mississippi River for a distance of about 200 miles, and that Knoxo and a few other points located within this territory are subjected to undue prejudice because their rates exceed the blanket rates.

At the time of the hearing the Fernwood & Gulf, a single-track line of standard gauge, extended from a connection with the Illinois Central at Fernwood, Miss., eastwardly for 32 miles. Knoxo is 27 miles from Fernwood. At Tylertown, a point 6 miles west of Knoxo, there is a connection with a branch of the New Orleans Great Northern. Fernwood and Tylertown were the only junction points with other carriers at the time of the hearing, but the line has since been extended 12 miles eastwardly through Foxworth, Miss., where it connects with the main line of the New Orleans Great Northern, to a connection with the Gulf & Ship Island at Columbia, Miss. It is now known as the Fernwood, Columbia & Gulf, but will be referred to hereinafter as the Fernwood & Gulf.

The Fernwood & Gulf was formerly owned by the Fernwood Lumber Company, but upon the complete separation of the lumber company and the railroad company we entered an order on December 21, 1914, vacating our orders in *The Tap Line Case*, 23 I. C. C., 277, 549, 31 I. C. C., 490, in so far as they related to the Fernwood & Gulf, and dismissed it from that proceeding.

Prior to 1908 the only trunk line connection of the Fernwood & Gulf was the Illinois Central, and prior to May 21, 1906, lumber rates from all points on its line to all destinations were made by combining its full local rates to Fernwood with the rates beyond. Effective on that date, rates were published from local points which were 2 cents higher than the rates from Fernwood, and this is the present basis for joint rates to Ohio River crossings and points beyond. To Memphis, Tenn., New Orleans, La., and some other points south of the Ohio River, this arbitrary has been increased to 2.5 cents in accordance with general order No. 28 of the Director General of Railroads. To certain points in Tennessee there are no joint rates from Knoxo and the applicable combination rates, based on Fernwood, exceed the junction-point rates by more than 2.5 cents. Rates from Fernwood and Tylertown via the Fernwood & Gulf do not exceed the respective rates from those points by way of the Illinois Central or the New Orleans Great Northern. The arbitraries over the junction-point rates accrue to the Fernwood & Gulf and in addition it receives a division of 2 cents per 100 pounds out of the joint rates.

not and has not been the practice of defendants Illinois Central and New Orleans Great Northern to extend the junction-point, blanket, basis of rates on lumber to points on short-line railroads in the territory. The Illinois Central and its affiliated line, the Illinois & Mississippi Valley, connect with eight such short-line railroads and none of them has the blanket rates. Lumber rates from local points on these short lines exceed the rates from the junction-point by arbitraries ranging from 1 to 4.5 cents. The New Orleans Great Northern has no short-line connections other than the Fernandina & Gulf and the Natchez, Columbia & Mobile, and to neither does it extend the blanket rates. Indeed, the general, although not universal, practice throughout the southeast appears to be to extend the blanket rates from local points on independent short lines by adding an arbitrary to the rate from the junction point. There are 95 such railroads in the territory east of the Mississippi and south of the Ohio, and in this record, and rates on lumber from local points on these roads are made on the arbitrary basis in 55 cases, on combination of locals in 27, and on the junction-point or blanket basis in 13 cases. Plaintiff states that from local stations on certain short lines in the territory the rates on lumber are the same as from the junction-point, and mentions rates from such points on the Mississippi Central, the Alabama & Mississippi, the Mississippi & Western, the Gulf & Northwestern, and the Pearl River Valley. Defendants New Orleans Great Northern and Illinois Central contend that the Mississippi Central is now 160 miles in length; that it carries considerable traffic other than lumber; that it had joint rates on a junction-point basis with the New Orleans & Northeastern prior to the establishment of connections with the New Orleans Great Northern at Wanilla, Miss., and with the Illinois Central at Natchez, Miss.; and that they were forced to extend the blanket rates to it because of this competition. The Alabama & Mississippi extends from Pascagoula, Miss., served by the Louisville & Nashville, through Evanston, Miss., where it crosses the Gulf, Mobile & Northern, to Vinegar Bend, Ala., and it connects with the Mobile & Ohio. The Mississippi & Western is a short line which connects with the Gulf, Mobile & Northern at Natchez, Miss. The Cybur, Gulf & Northern no longer exists. A portion of its line is now owned by the Pearl River Valley, connecting with the New Orleans & Northeastern at Picayune, Miss. It is to be observed that none of these roads connects with either the Illinois Central or the New Orleans Great Northern, yet both these defendants concur in joint rates on the blanket basis from local points on

these short lines. It appears, however, that if the Illinois Central and the New Orleans Great Northern should refuse to concur in these joint rates, similar rates would still apply to most destinations via other routes.

Practically all of the yellow-pine production on the Illinois Central and the affiliated Yazoo & Mississippi Valley is in the territory south of the line of the Alabama & Vicksburg, and from all points in this territory, both on their main lines and on their branch lines, the Illinois Central and Yazoo & Mississippi Valley blanket their rates on yellow-pine lumber and its products to Ohio River crossings and points taking the same rates; to the territory beyond the Ohio River crossings, including eastern and Virginia cities; and to points in Kentucky and Tennessee on their own lines and on the lines of certain other carriers. Points on the main line and branch lines of the New Orleans Great Northern are similarly blanketed.

The Fernwood & Gulf is well within this blanket territory and nearer to the northern boundary than to the southern. The distances from Knoxo to the destinations involved herein are substantially less than the distances to the same destinations from many shipping points having the blanket rates. For example, from Ponchatoula, La., a lumber-shipping point 49 miles north of New Orleans on the main line of the Illinois Central, the distances are 26 miles greater than from Knoxo. The Illinois Central apparently has no branch lines in the blanketed territory except the short Monticello branch, but from Covington, La., the terminus of a branch of the Yazoo & Mississippi Valley connecting with the main line of the former road at Hammond, La., and with the main line of the latter at Baton Rouge, La., the distances to Memphis, Tenn., through which point most of the traffic with which we are here concerned moves, are 115 miles greater via Baton Rouge and 44 miles greater via Hammond than the corresponding distance from Knoxo. From Woodville, Miss., also on a branch of the Yazoo & Mississippi Valley, the distances are 71 miles greater than from Knoxo. From Folsom, La., a point on a branch line of the New Orleans Great Northern, the distances are 24 miles greater than from Knoxo by way of Tylertown, and 96 miles greater by way of Foxworth. The points above named, from all of which yellow-pine lumber is shipped, are in the extreme southern part of the group and the distance comparisons are given merely to show that Knoxo is well within the blanketed territory.

Defendants submitted evidence tending to show that the rates from Knoxo are not unreasonable as compared with rates for similar distances from points in the south on other short lines, or as compared with the rates on lumber between certain points in central territory for similar distances. In support of its allegation of unreasonable-

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ness complainant relies upon the comparison of the Knoxo rates with those from the blanketed points.

The Illinois Central states that it can not afford to shrink its earnings by allowing larger divisions to the Fernwood & Gulf, but in this connection it may be observed that the division accorded by it to the Mississippi Central was 6 cents per 100 pounds at the time of the hearing, and that under our sixth supplemental order in *The Tap Line Case, supra*, a maximum division of 5 cents per 100 pounds may be allowed to a tap-line common carrier on shipments from points over 20 miles and not more than 40 miles from the junction, this being in addition to any arbitrary over the junction-point rate. The Fernwood & Gulf shows that it has operated at a loss, and that the loss would be greater if its revenue on lumber were reduced by the amount of the arbitrary, since lumber supplies 98 per cent of its total traffic.

The material facts in this case are the same as those in *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.*, 43 I. C. C., 581; 51 I. C. C., 317. In that case it was shown that rates on yellow-pine lumber from all points located on the Louisville & Nashville and other so-called trunk lines and on certain short lines in Louisiana, Mississippi, Alabama, and Florida, between the Mississippi and Chattahoochee rivers, and between the Gulf of Mexico and a line drawn from Vicksburg, Miss., through Jackson and Meridian, Miss., Selma, Montgomery, and Opelika, Ala., to the Chattahoochee River, were blanketed to Ohio River crossings and to destinations in Kentucky and Tennessee and in central and trunk line territories; that from Falco, Ala., the northern terminus of the Florida, Alabama & Gulf, which connects with the Louisville & Nashville at Galliver, Fla., 26 miles from Falco, joint rates to said destinations were made 2 cents or 3.25 cents over the junction-point, or blanket, rates; that while the distance from Falco to Cincinnati, Ohio, a typical destination point, is slightly greater than the average weighted distance from the Louisville & Nashville blanket points, Falco is well within the limits of the blanket; that there were numerous so-called short lines traversing the blanket territory and connecting with the Louisville & Nashville, to none of which the blanket rates were extended; and that it was the general policy of the Louisville & Nashville to make the rates from points on short lines like the Florida, Alabama & Gulf higher than the rates from the junction points. We found that the rates from Falco were, and since January 1, 1916, had been, unreasonable and unduly prejudicial to complainant to the extent that they exceeded or had exceeded the rates from Galliver by more than 2 cents per 100 pounds, and that for the future they would be unduly prejudicial to complainant to the extent to which they ex-

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ceeded the blanket basis of rates from Galliver to the same destinations.

The fundamental issue is whether carriers which have equalized rates on lumber to certain destinations from all their main-line and branch-line points, and from points on certain independent short lines as well, which are located within a producing territory of wide extent may, without being guilty of undue prejudice, refuse to extend similar blanket rates to producing points within such territory which are located on other independent short lines. No question is raised as to the propriety or desirability of the blanket already established, but on the contrary it seems to be conceded that it is of general advantage to producers, consumers, and carriers alike. The sole question is whether defendants were and are justified in refusing to extend its benefit to these other short-line points and specifically, in this case, to Knoxo on the line of the Fernwood & Gulf.

Clearly cost of service furnishes no justification for such refusal, for the haul from Knoxo is shorter than the hauls from numerous other points to which the blanket rates apply, and there is no evidence that it is attended by unusual transportation difficulties. As compared with a single-line haul, some slight additional cost is doubtless involved in the separate corporate organization of the Fernwood & Gulf and in its separate billing and accounting expense, but the blanket rates are not now confined to single-line hauls, but apply in many instances to multiple-line routes. Nor will competition serve as a justification, for the blanket rates apply not only at junction points where competition exists, but as well at all local points on both the main lines and branch lines of defendants.

If neither cost of service nor competition justifies the discrimination, what circumstances are there surrounding points located, like Knoxo, on independent short lines which make it reasonable that they should be excluded from the benefits of the blanket system? It has been suggested that the lumber shipper on the short line may have acquired his stumpage more cheaply by reason of its relative inaccessibility prior to the construction of the short line, or by reason of the difference in rates; but there is no satisfactory evidence as to this and such evidence would obviously be irrelevant and immaterial in the consideration of a rate structure. It is suggested that the independent short lines are likely to be abandoned with the depletion of the timber areas; but this is mere speculation. Branch lines of the larger carriers are at times abandoned for the same reason, and on the other hand independent short lines not infrequently survive as the original lumber industry is superseded by agriculture or other industrial development. Many of the so-called trunk lines in

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on in question are made up in part of what were originally roads. It is suggested that the short lines do not furnish immensurate quota of equipment; but this is a matter to be considered in the fixing of their divisions. Perhaps the most important suggestion is that if the blanket rates are extended to other points it will follow as a necessary consequence that they must be extended to all similar points on other independent short lines, and the revenues of the trunk lines will thereby be reduced materially. But the protection of revenue goes primarily to the issue of reasonableness and is not sufficient justification for a prejudicial adjustment. In the yellow-pine territory west of the Mississippi the blanket rates have been uniformly extended to all points. We find nothing of record in this case which warrants a deviation from the conclusions reached in *McGowan-Foshee Lumber Co. v. F. & G. R. R. Co.*, *supra*. We do not find that the rates on yellow-pine lumber, timber, and lumber products in effect subsequent to January 1, 1919, from Knoxo to the destinations in question were at all unreasonable, except that we find that the rates to points in Tennessee, which were made by combination of the local rates from Fernwood, were unreasonable to the extent that they exceeded the corresponding contemporaneous rates from Fernwood to the same destinations by more than 2.5 cents per 100 pounds. We find, however, that subsequent to January 1, 1919, the rates on yellow-pine lumber, timber, and lumber products from Knoxo to other crossings, to points in Wisconsin, Minnesota, Iowa, and Illinois, to points in central and eastern trunk line territories, to points in Tennessee and Kentucky the rates to which are added from points producing yellow pine on the Illinois Central and New Orleans Great Northern railroads south of Jackson, Miss., are such that for the future they will be, unduly prejudicial to complainant to the extent that they exceed the blanket basis of rates from Fernwood, Tylertown, and Foxworth.

Complainant has not shown that it was damaged by the undue rates. It does not appear that the price which complainant paid for its lumber was fixed by its competitors located on the Illinois Central, Yazoo & Mississippi Valley, and New Orleans Great Northern. Complainant concedes that it must also meet the competition of lumber producers located west of the Mississippi River. Complainant has shown that it made shipments to points in Tennessee upon which rates made by combination upon Fernwood were

HALL *Commissioner*, dissenting in part:

A rate group or blanket is not geographic. It embraces no area. It consists of certain railroad stations from or to which the rates apply. A point not on the railroad does not take those rates even though surrounded by stations that do. If, later, such a point is connected by rail with one of those stations it does not because of that fact become entitled to the group rates. Something more is needed. The connection may be by an independent line, which has had no share in evolving the group rates. It may be by a branch of the trunk line.

We have said in some cases that an arbitrary over the junction point was reasonable, and in others unreasonable. In others still, as here, we have said that it was not unreasonable, but was and would be for the future unduly prejudicial to the former country point. This has been said of points on independent lines because points on other independent lines were differently treated by the trunk line. It has also been said of branch-line points when points on other branches of the same carrier were differently treated. And it has been said of points on independent lines, because branch-line points of the trunk line were differently treated. Perhaps these decisions can not be reconciled. But such error as may have found lodgment in them seems to have sprung from the conception of a group or blanket as a part of the earth's surface, with defined boundaries.

However convenient this may be as a figure of speech, or in coloring a map, it should not dim our perception of the origin and essential character of "group" rates, or the reasons for their existence. They penetrate a territory, instead of embracing or permeating it, and the right of shippers within that territory to share in them must rest upon the same considerations as determine elsewhere what is unreasonable and what is unduly prejudicial. It is easy to carry the doctrine of uniformity beyond the warrant for it.

Group rates find their justification largely in the law of averages. If reasonable for the average haul they may be justified in proper case, even though high for the shortest haul and low for the longest. But the carriers that established the group did so voluntarily or under stress of competition. We had no power to compel the grouping, and in fixing the average or group rate they took into account the stations and traffic to which that rate was to apply, not other stations then nonexistent or off their rails, not traffic the volume and condition of which were unknown. If other stations must be included the group rate may need revision, and the revision may be upward. It seems unjust that shippers at points already grouped should be exposed to payment of a higher rate, or to exclusion from the group, merely because some off-line point in the vicinity seeks

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to share in the rate whether or not it shares in the transportation conditions that led to the grouping.

Before we make a finding which may bring about results like these we should have before us a record which clearly establishes such similarity of transportation conditions and surrounding circumstances as will fully warrant it. In my opinion we have not such a record here, and I therefore dissent from the finding of undue prejudice. The complaint should be dismissed.

I am authorized to say that COMMISSIONER POTTER joins in this dissent.

DANIELS, *Commissioner*, dissenting:

Virtually this same issue was involved in *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.*, 43 I. C. C., 581; 51 I. C. C., 317; and in *Whitewater Lumber Co. v. A. C. Ry.*, 53 I. C. C., 278. When a trunk line carrier over a considerable stretch of its main line carries the same rate on lumber in carloads to a given territory of destination; when, in addition thereto the same rate is carried from the trunk line carrier's own branches connecting with the main line at points along the blanketed stretch of the main line, why is not a shipper on an independent branch line connecting with the blanketed stretch of the trunk line, when said shipper's freight is carried for distances not in excess of the average haul over the carrier's own branches under the common rate, entitled to the same common or blanket rate?

Under certain circumstances he may be so entitled. If, for example, an extensive blanket like the yellow-pine blanket territory west of the Mississippi River assimilates, under a single rate, hauls that may vary by hundreds of miles, and the integrity of the blanket is defended by the carriers and justified by us on grounds of general utility to producers, consumers, and carriers alike, there could generally be no apparent justification for singling out shippers on one particular branch line, either proprietary or independent, and exacting an arbitrary surcharge over the blanket rate from shippers thereon. *Ladd & Co. v. Gould Southwestern Ry. Co.*, 36 I. C. C., 179.

But in the absence of the conditions recited above, the issue may be determined on other grounds.

It is urged with force that the higher rate to the shipper on the independent branch line can not be justified on the ground of a difference in specific cost of service. Where the haul is no longer than from points generally on proprietary branches, the argument from specific cost would seem to support the claim for identity of rates. There will, however, be some additional costs involved in the overhead expense of the separate corporate organization of the in-

dependent branch line, and the additional billing and accounting expenses may also properly be considered. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.*, 51 I. C. C., 317, 322.

There is often urged the commercial argument that the shipper on the independent branch line has bought his stumpage more cheaply by reason of its originally greater inaccessibility to markets. In many cases this is probably true, though when he secures rail connection with the trunk line it does not appear that the price originally paid for stumpage should be any bar to his receiving thereafter a reasonable and nonprejudicial rate.

Where, however, a trunk line has built a branch line, it is a fair presumption that it is the carrier's expectation that the region traversed will permanently require service and permanently offer patronage to justify the service to be rendered. This expectation of permanent patronage may justify a rate adjustment to shippers on the proprietary branch line which can not, with equal reason, be demanded, by shippers whose traffic is likely to cease upon the depletion of limited quantities of natural resources such as stands of timber. The removal of timber in some instances results in a discontinuance of paying traffic. We have only recently permitted the entire abandonment of a short line and the abandonment of the greater part of another short line where the removal of timber practically rendered profitable operation impossible. What is originally a logging or mining road may prove to be a pioneer, permanently opening up new country with a steady traffic, or it may prove a commercial venture of exploitation whose operation may cease when the country has been logged over or the mine's profitable deposits have once been removed.

In this aspect of the matter there may be justification for not according the shipper on an independent branch road a blanket rate accorded for hauls of equal length on the carrier's proprietary branches. To insist upon an identity of rates as of right is to insist that some one other than the main-line carrier may determine the chances for permanent railroad operating success in a new field, and compel the main-line carrier to contribute to the success of the venture by according a parity in rates. When the independent road is virtually one in interest with a lumber company, this claimed identity of rates might approximate a forced underwriting by the trunk line carrier of a new industrial project. Particularly is this consideration enforced by the well-known fact that such independent short-line roads rarely contribute a commensurate supply of equipment toward carrying the freight that originates jointly upon their lines and the lines of the trunk lines including the latter's branches. Provisions of adequate equipment and appliances by the trunk line

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is requisite to handle the freight offered by the short line without there being in all cases any certain or probable warrant that such provision will have permanent and remunerative use.

Nor does it necessarily follow that in every case in which a carrier blankets its main-line points it must also extend the blanket to include its own branch-line points. The carrier's rights and duties in this respect are limited and controlled by the rights of competing shippers located on branch lines extending from the grouped main-line points to enjoy rates which are properly related to the rates applying from the grouped points taken as a whole, and no hard and fast rule can be laid down which would permit or deny a carrier, regardless of the extent to which the main-line points are grouped, arbitrarily to exclude its branch-line points from the group rate.

We have recognized that a carrier may, within proper limits, protect its own business, and that there may be cases in which a carrier should not be required to give to points on an independent connection the same rates to markets that it gives to points on its own branch lines in the same region. That rule is subject to the qualification that the carrier may not so adjust rates on its own lines as unduly to prejudice shippers on other lines or to deprive such shippers of just and reasonable rates merely through a desire to serve shippers on its own lines. *Willamette Valley Lumbermen's Asso. v. S. P. Co.*, 51 I. C. C., 250, 261.

On the basis of the foregoing analysis I do not think that the complainant is entitled to the junction-point rate on lumber.

COMMISSIONER ESCH did not participate in the disposition of this case.

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INVESTIGATION AND SUSPENSION DOCKET No. 1268.
LOGS FROM BALTIMORE, MICH., TO OCONTO AND
STILES, WIS.

Submitted March 7, 1921. Decided April 28, 1921.

Proposed increased rates on logs from Baltimore, Mich., to Stiles and Oconto, Wis., when for manufacture and reshipment over the lines of the delivering carrier, found not justified. Respondents required to cancel suspended schedules without prejudice to filing new schedules in accordance with the findings herein.

J. N. Davis for respondents.

F. M. Elkinton and *F. H. Cogswell* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to become effective December 30, 1920, respondents propose to increase the joint commodity rate for the transportation from Baltimore, Mich., to Oconto and Stiles, Wis., of logs the manufactured product of which is to be reshipped over the lines of respondent Chicago, Milwaukee & St. Paul, hereinafter called the Milwaukee. Upon protest of the Holt Lumber Company of Oconto operation of the schedules was suspended until May 29, 1921. Rates will be stated in cents per 100 pounds unless otherwise specified.

Baltimore is a local point on the Duluth, South Shore & Atlantic, hereinafter called the South Shore, 28 miles west of that road's junction with the Milwaukee at Sidnaw, Wis. The traffic originates about 6 miles north of Baltimore on a branch line of the South Shore and is billed at the Baltimore rate. Oconto is on Lake Michigan at the terminus of the Milwaukee's branch line from Oconto Junction, Wis. Stiles is on the main line of the Milwaukee 2.1 miles north of Oconto Junction. The entire haul to Stiles is 174 miles; to Oconto, 187 miles. There has been no recent movement to Stiles.

Protestant owns a tract of standing timber and operates a lumber camp approximately 6 miles north of Baltimore. In 1903 respondents first published a joint rate from Baltimore to Oconto and Stiles of \$4 per 1,000 feet, out of which protestant received an allowance of \$1.50 for the haul over the logging line operated by it from the

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loading point in the woods to the point of interchange with the South Shore's branch line. This rate was canceled effective August 15, 1906, and a rate of \$2.50 was established for the movement over respondents' lines. This was increased by 50 cents on November 16, 1910, after an interval of three months during which the rate was 3.5 cents per 100 pounds, and has since remained unchanged except by the general increases. The present rate to both destinations is \$5.40 per 1,000 feet, divided equally between the Milwaukee and the South Shore. They propose to change this to 10 cents per 100 pounds, minimum 50,000 pounds.

The estimated weight per 1,000 feet of logs is: Hardwood, 14,000 pounds; soft wood, 10,000 pounds; and mixed, 12,000 pounds. The average log shipment is said to weigh somewhere between 12,000 and 14,000 pounds per 1,000 feet. At the average of 13,500 pounds used in *Saw Logs between Michigan and Wisconsin Points*, 60 I. C. C., 350, the present rate of \$5.40 per 1,000 feet is equivalent to 4 cents per 100 pounds.

The resulting earnings under the present and proposed rates are:

From Baltimore, Mich., to—	Distance.	Present rates (per 1,000 feet).	Proposed rates (per 100 pounds).	Earnings per car-mile. ¹		Earnings per ton-mile.	
				Present rates.	Proposed rates.	Present rates.	Proposed rates.
	<i>Miles.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Mills.</i>
Stiles, Wis.....	174	\$5.40	10	11.5	28.7	4.6	11.5
Oconto, Wis.....	187	5.40	10	10.7	26.7	4.3	10.7

¹ Car-mile earnings are based upon minimum of 50,000 pounds.

² Equivalent to 4 cents per 100 pounds.

In *Saw Logs between Michigan and Wisconsin Points*, *supra*, the origin and history of log rates in this territory are summarized. They were originally established by contracts with log producers for train-load movements and were expressed in amounts per 1,000 feet. Later they were published and the provisions requiring train-load movements were omitted without change in the rates. Respondents insist that the competitive influences under which the contracts were originally made, and the rarity of increases since then, have resulted in a rate level that is now too low.

The proposed rates are published as joint rates. Respondents intended to base them on the combination of local rates, 5.5 cents to Sidnaw, plus rates beyond of 4.5 cents to Stiles and 5.5 cents to Oconto. Through error the joint rates were made the same to Oconto and Stiles. Two different scales of distance rates on local shipments of logs are published by respondents. Where the carrier also hauls the products outbound its log scale is substantially lower than where it has no outbound haul. The South Shore's factor of 5.5 cents to

Sidnaw is based on the higher scale. The factors from Sidnaw of 4.5 cents to Stiles, 140 miles, and 5.5 cents to Oconto, 153 miles, represent the Milwaukee's single-line rates for those distances when it has the outbound haul of the products.

Respondents contend that operating conditions peculiar to the log traffic justify much higher rates than those now published. They say that cars are returned empty; that the heaviest movement occurs during the winter months when operating conditions are most unfavorable; that practically no other traffic moves over the branch line running north from Baltimore; and that, from the nature of the service, the equipment is subjected to hard usage. Three, and at times four, crews are used in handling this traffic from Sidnaw to Oconto.

They also contend that the contract rates were abnormally low; that they seek now merely a reasonable basis; and that their proposed rates compare favorably, as shown by exhibits, with those applicable on similar traffic for like hauls in this territory. Their witness admitted that he knew of no movement under those rates.

Protestant's position is that the proposed rates would exceed the present rates by from 85 to 159 per cent, depending upon the kind of logs and the resulting weight of the shipments, an increase so prohibitive that protestant could not continue to ship logs from its tract near Baltimore.

In *Saw Logs between Michigan and Wisconsin Points, supra*, we approved rates based on a distance zone scale, already applied to intrastate traffic in Michigan and Wisconsin and also applicable on interstate movements over the Chicago & North Western. Under that scale the rate for distances ranging from 151 to 195 miles is 5.5 cents when for reshipment over the rails of the inbound carrier. This rate would yield ton-mile earnings of 5.9 mills and car-mile earnings of 14.7 cents for a movement of 187 miles, and for 174 miles 6.3 mills and 15.8 cents, respectively. The joint-line rates there proposed were not approved, for reasons stated, but it is significant that the joint-line rates in effect were upon a level appreciably higher than the single-line distance zone scale and yielded car-mile earnings ranging from 19 cents to 25.1 cents for distances from 239 to 283 miles. Present distance rates on logs in carloads, minimum 50,000 pounds, between stations on the South Shore for 84 miles, the distance from point of origin to Sidnaw, are 2.5 cents, provided the manufactured product is reshipped over the line of that carrier, and 5.5 cents when the product is not so reshipped. Rates from Baltimore of 7.5 cents to Stiles and 8 cents to Oconto would yield ton-mile earnings of 8.6 mills, and car-mile earnings of 21.5 and 21.4 cents, respectively.

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We are of opinion that the proposed rates are unreasonably high, but that respondents have justified a substantial increase over their present rates. We accordingly find that the proposed increased rates from Baltimore, Mich., to Stiles and Oconto, Wis., have not been justified, and respondents will be required to cancel the schedules under suspension without prejudice to the filing of schedules establishing on not less than five days' notice rates not to exceed 7.5 cents and 8 cents per 100 pounds, respectively, to these destinations.

An appropriate order will be entered and the proceeding discontinued.

AITCHISON, *Commissioner*, dissents.

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No. 11860.

MONTANA RATES AND FARES.

IN THE MATTER OF INTRASTATE RATES AND FARES
OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY AND OTHER CARRIERS IN THE STATE OF
MONTANA.

Submitted April 11, 1921. Decided May 3, 1921.

Findings the same as those made in the former report herein, 60 I. C. C., 61, with reference to standard intrastate passenger fares and excess-baggage charges, in the state of Montana, of the respondent steam carriers, made with respect to standard intrastate passenger fares and excess-baggage charges, in the state of Montana, of the Butte, Anaconda & Pacific Railway Company.

Warren Nichols for Butte, Anaconda & Pacific Railway Company.
No other appearances.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

By the former report in this case, 60 I. C. C., 61, and the order issued in connection therewith, the steam carriers respondent were authorized and directed to make increases in their intrastate standard passenger fares and excess-baggage charges, and to make a surcharge upon intrastate passengers in sleeping and parlor cars, in the state of Montana, corresponding to the increases made in their interstate standard passenger fares and excess-baggage charges, and to the surcharges made upon interstate passengers in sleeping and parlor cars, respectively, in the mountain-Pacific group, under authority granted in *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, in order to remove unjust discrimination against interstate commerce which was found to exist. The effective date of our order was March 2, 1921, and in conformity therewith the steam carriers respondent increased their intrastate standard passenger fares which had formerly been based upon 3 cents per mile, the maximum permitted by state authority, to a basis of 3.6 cents per mile; increased their intrastate excess-baggage charges; and established surcharges upon intrastate passengers in sleeping and parlor cars.

The Butte, Anaconda & Pacific Railway Company has at all times been a respondent to this proceeding, but as it files its annual reports
61 I. C. C.

with us as an electric line, and as no evidence dealing specifically with its character or the nature of its operations was introduced at the former hearing, the order, which applies only to carriers by steam railroad, was not directed against it. The result is that it still maintains its intrastate passenger fares upon a basis of 3 cents per mile, and also has been unable to increase its intrastate excess-baggage charges. It does not transport passengers in sleeping or parlor cars. Its interstate freight and passenger rates and excess-baggage charges were increased following Ex Parte 74, and the Montana commission permitted its intrastate freight rates to be correspondingly increased.

Upon petition of the Butte, Anaconda & Pacific, which will hereinafter be referred to as the petitioner, in which it asks for a further hearing with a view to securing the same relief with respect to its Montana intrastate passenger fares, and excess-baggage charges as was accorded to the steam carriers respondent, the case was reopened. A further hearing has been had and the case is submitted upon the record without briefs or oral argument.

The petitioner was incorporated in 1892 and its main line from Butte to Anaconda, Mont., 26 miles, was completed in 1894. Its line has since been extended 23 miles west of Anaconda to Southern Cross, Mont., and it operates several short branch lines. Prior to 1912 the petitioner operated entirely by steam power. In 1912 and 1913 its line from Butte to Anaconda was equipped for electrical operation and has since been so operated. The petitioner also operates by electric power a short branch from Anaconda to Stuart, Mont., which it leases from the Northern Pacific. The remainder of its line is still operated by steam power. It handles a large volume of freight traffic and maintains regular passenger schedules between points on its line. Its witness testified that it operates just as any steam railroad, with standard steam equipment, except that on the electrified portions of its line it uses electric instead of steam locomotives.

The petitioner customarily participates in through routes and joint rates and fares on interstate and intrastate traffic with its steam-line connections. A letter of record received subsequent to the hearing, however, indicates that since the steam carriers have increased their intrastate fares in conformity with our former findings herein, in which increases the petitioner was not authorized to participate, they have canceled their joint intrastate passenger fares with the petitioner so that the fares at present in effect between points on petitioner's line and points on other lines in the state are combinations made by adding to the steam lines' fares the petitioner's local fares based on 3 cents per mile to or from the junction points. Portions of the petitioner's line are paralleled by steam lines, with the result that passengers may now travel between certain points over petitioner's

line at lower charges than apply between the same points over a steam line.

An exhibit of petitioner shows that if its intrastate passenger fares and excess-baggage charges were increased correspondingly to those of the steam lines, as authorized by our former order herein, and the increased fares and charges applied to its intrastate passenger traffic for the year ended June 30, 1920, the result would be an increase of \$22,365.12 in passenger revenue, and \$164.05 in excess-baggage revenue, over the revenues actually received.

The petitioner adopts as its own, in so far as it is applicable, the evidence introduced in behalf of respondents at the former hearing, and discussed in the former report, as to the discrimination against interstate commerce growing out of the application of lower passenger fares and baggage charges to intrastate traffic than to interstate traffic. In *South Carolina Fares and Charges*, 60 I. C. C., 290, we held that the Piedmont & Northern Railway, an electric line, should be dealt with the same as the steam carriers respondent in that case. Petitioner contends that it is entitled to no less favorable treatment.

No reason appears why the fares and charges of petitioner should be upon a lower basis than those applicable on the steam lines respondent. Its costs of operation in the past few years have increased in substantially the same ratio as those of the steam lines. It is a member of the American Association of Short Line Railroads and is a party to wage-scale agreements subject to the jurisdiction of the Railroad Labor Board.

In their answers to the petition for rehearing the Montana commission and the Montana Lumber Manufacturers' Association, intervenor, offered no objection to the granting thereof, but stated that they wished their opposition to the position of the carriers, and their objections and arguments in support thereof made at the former hearing, to be understood as applying with equal force to the contentions of petitioner.

Following the former report in this case, and upon the whole record, we are of opinion and find that the increases in standard passenger fares and excess-baggage charges made by the respondent steam railroads under the authority granted in Ex Parte 74, and now in effect, and the corresponding increases made by the petitioner, and now in effect, within the mountain-Pacific group, result in reasonable passenger fares and excess-baggage charges for interstate traffic within that group, and that the failure of the petitioner to increase its standard intrastate passenger fares and excess-baggage charges correspondingly within the state of Montana has resulted and will result in intrastate fares and charges lower than the corre-

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sponding interstate fares and charges, in undue prejudice to passengers traveling in interstate commerce within the state of Montana, and between points in the state of Montana and points in other states; in undue preference of, and advantage to, passengers traveling intrastate within the state of Montana; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said standard intrastate passenger fares and excess-baggage charges which will correspond with the increases heretofore made by said respondents as aforesaid, and now in effect, in standard interstate passenger fares and excess-baggage charges.

We further find that, whether the aforesaid passenger fares and excess-baggage charges of the petitioner pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by petitioner under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

These findings are without prejudice to the rights of the authorities of the state of Montana, or any other interested party, to apply in the proper manner for a modification of our findings and order as to any specific intrastate fare or charge on the ground that the latter is not related to the interstate fares and charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

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No. 12085.

NORTH DAKOTA RATES, FARES, AND CHARGES.

IN THE MATTER OF INTRASTATE RATES, FARES, AND CHARGES OF THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY AND OTHER CARRIERS IN THE STATE OF NORTH DAKOTA.

Submitted April 22, 1921. Decided May 3, 1921.

Certain rates, fares, and charges required by state authority to be maintained by respondents within the state of North Dakota found to be lower than the corresponding interstate rates, fares, and charges authorized by *Increased Rates, 1920*, 58 I. C. C., 220, and to be unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce.

William Lemke and Karl Knox Gartner for state of North Dakota and Board of Railroad Commissioners of North Dakota.

B. W. Scandrett, R. J. Hagman, and A. H. Lossow for respondents.

D. L. Kelley for state of South Dakota and Board of Railroad Commissioners of South Dakota.

John E. Benton for National Association of Railway and Utilities Commissioners.

REPORT OF THE COMMISSION.

HALL, Commissioner:

In *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, we authorized increases in rates, fares, and charges to be made by all steam railroads subject to our jurisdiction in the group which serves the state of North Dakota. These increases within that group, designated by us as the western group, were 35 per cent in freight rates; 20 per cent in passenger fares and charges, excess-baggage charges, and rates on milk and cream; and a surcharge upon passengers in sleeping and parlor cars, amounting to 50 per cent of the charge for space in such cars, to accrue to the rail carriers. Increased interstate rates, fares, and charges pursuant thereto were established, most of them effective on August 26, 1920.

Prior to our decision in *Increased Rates, 1920, supra*, the steam railroads operating in the state of North Dakota had applied to the Board of Railroad Commissioners of that state, hereinafter referred

61 I. C. C.

to as the North Dakota or the state commission, for permission to make increases in their intrastate rates, fares, and charges similar to those which should be authorized by us on interstate traffic. Subsequent to our decision hearing was held by the North Dakota commission, which had before it all the evidence in *Ex Parte 74*. A report and order was promulgated under date of August 24, 1920, granting the carriers' application except as to rates on milk and cream, but denying them authority to make effective the Pullman surcharge. Increased intrastate rates, fares, and charges pursuant thereto were established effective September 1, 1920.

On September 3, 1920, suit was brought in the supreme court of the state of North Dakota to enjoin the carriers from continuing to collect these increased rates, fares, and charges on the ground that the order of August 24 was null and void because it had only been approved by one of the commissioners. The court upheld this contention and by order of September 21 enjoined the carriers from collecting the increased intrastate rates, fares, and charges and directed them to refund amounts collected in excess of the intrastate rates, fares, and charges in effect prior to September 1.

On September 21, 1920, the state commission made a report and order substantially similar to those of August 24 but remedying the irregularities pointed out by the court. The carriers again filed tariffs embodying the increases authorized to become effective September 26, 1920, but before that date were served with a further order by the same court in the same case which restrained them from collecting the increased rates, fares, and charges authorized by the state commission on September 21. On October 1 the court directed the state commission to hold a further hearing on the carriers' application and continued the restraining order in effect pending such further hearing. This was had in December, and on December 14, 1920, the state commission entered an order and finding denying the carriers' application in its entirety.

Thereafter certain carriers by steam railroads operating in North Dakota filed with us a petition in their own behalf, and on behalf of all steam railroads engaged in intrastate and interstate transportation in that state, for relief under section 13 of the interstate commerce act. This proceeding, to which all steam railroads subject to our jurisdiction in the state of North Dakota have been made parties respondent, was then instituted on our own motion. The record in *Ex Parte 74* has been made part of the record in this case. At the hearing counsel for the state noted exceptions to several rulings made by the examiner. We have reviewed these rulings and they are severally affirmed.

Respondents Chicago & North Western Railway; Chicago, Milwaukee & St. Paul Railway; Great Northern Railway; Minneapolis, St. Paul & Sault Ste. Marie Railway; Northern Pacific Railway; Farmers' Grain & Shipping Company; and Midland Continental Railroad are engaged in interstate and intrastate transportation of passengers and freight in North Dakota.

I. PASSENGER FARES.

From July 1, 1907, until June 10, 1918, the intrastate and interstate passenger fares were alike based on 2.5 cents per mile. The intrastate basis was prescribed by chapter 199, Laws of North Dakota for 1907. On June 10, 1918, under general order No. 28 of the Director General of Railroads, the basis for intrastate and interstate passenger fares alike was increased to 3 cents. The basis is now 3 cents intrastate and 3.6 cents interstate. This latter applies both intrastate and interstate in South Dakota, Minnesota, and Montana. The North Dakota commission in its reports of August 24 and September 21 found:

As to passenger fares and baggage rates, the Commission is of the opinion that any departures from the percentage rate of increase established by the Interstate Commerce Commission for western classification territory would obviously be discriminatory and that the increases of 20 per cent for such services should be granted by this Commission.

The record before us amply warrants a similar finding. There are no traffic or transportation conditions in the state of North Dakota which justify a lower basis of fares for intrastate transportation than for interstate. The five respondents first above named introduced exhibits which indicate that if the present intrastate fares are continued for one year, and if the intrastate traffic during that year is the same as in the year ended November 30, 1920, the direct loss of revenue through failure to secure the 20 per cent increase in intrastate fares will approximate \$800,000. During the period mentioned the intrastate passenger revenue exceeded the intrastate freight revenue.

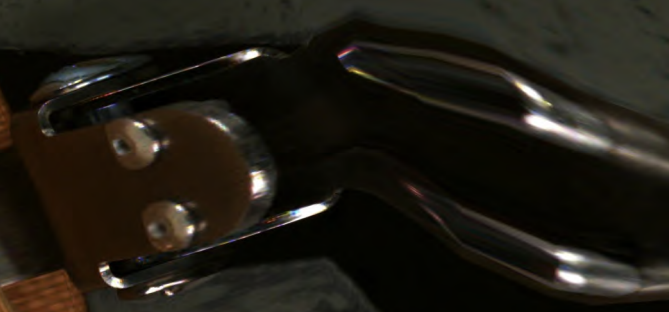
The evidence as to passenger fares is the same in nature and of like import as that considered by us in other state cases, particularly *Minnesota Fares and Charges*, 59 I. C. C., 502, and need not be detailed here.

Counsel for the state lays stress upon the fact that the Northern Pacific and Great Northern have many branch lines in North Dakota on which local passenger trains are operated which do not cross any state line. Passengers thereon going to destinations beyond the state line must, of course, change to a through train at the junction point. Counsel contends that even though the passenger is traveling on a

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94.5	67.5	81	50	60
108	81	108	60	80
121.5	94.5	121.5	70	90
135	108	135	80	100
148.5	121.5	148.5	90	100
175.5	135	175.5	100	110
189	148.5	189	110	130
202.5	175.5	202.5	130	140
202.5	189	202.5	140	150
216	202.5	229.5	150	170
243	229.5	243	170	180
256.5	243	256.5	180	190

18.
es Supreme Court. Rates over two or more lines
ler general order No. 28 and Ex Parte 74.

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Minnesota towns are in competition for North Dakota business, and their rates are on a basis 35 per cent higher than those available to their competitors in North Dakota.

As an instance of discrimination against interstate commerce it was shown that merchants at Moorhead and East Grand Forks, Minn., are draying their shipments for North Dakota destinations to Fargo and Grand Forks, N. Dak., respectively. During the first two weeks in February, 1921, 125 shipments were drayed from Moorhead to Fargo and then shipped from Fargo over the Northern Pacific to points in North Dakota, and during the same period 33 shipments, consisting of 210 packages, were drayed from East Grand Forks to Grand Forks and then shipped to North Dakota destinations at the lower intrastate rates. As the Minnesota intrastate rates are also on a lower level than the interstate rates, merchants at Fargo are likewise draying from and to Moorhead their inbound and outbound shipments from and to Minnesota points.

The record contains illustrations of the manner in which the through interstate rates can be defeated by forwarding to a North Dakota point, taking delivery, and reshipping. This is not always practicable, but on some commodities it could be done with some saving.

Respondents compared the present interstate class rates between North Dakota and Minnesota with the interstate distance scales in effect between many other states. The Minnesota-North Dakota scale is lower in some instances and higher in others than that applying between Minnesota and Iowa. It was explained that, considering traffic conditions, the rates between Minnesota and Iowa should be lower than between Minnesota and North Dakota, as southern Minnesota and Iowa are much more densely populated than northern Minnesota and North Dakota. It is further shown that the traffic density of the Great Northern, Northern Pacific, and Soo lines was approximately twice as great in Minnesota as in North Dakota. The Minnesota-North Dakota scale is lower for shorter distances and a little higher for longer distances than the scale prescribed by us in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201. Many other comparisons submitted have been considered but need not be detailed here.

On behalf of the state evidence was submitted to show the disadvantage of North Dakota towns on account of the difference in level between the interstate rates and the Minnesota intrastate rates. In considering a similar contention in *Indiana Rates, Fares, and Charges*, 60 I. C. C., 337, 842, we said:

It should be borne in mind that this case involves the relation between interstate and intrastate rates rather than the relation between the intrastate rates

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in two different states. If the rates in some state other than Indiana are too low as compared with those in Indiana, the situation should not be corrected by interference with interstate traffic. The difficulty can be cured by proceeding against the unduly low rate in the other state on the ground that it is a discrimination against interstate and foreign commerce.

The state contends that it is entitled to the same basis of rates as that now in effect intrastate in Minnesota. It contends that the Supreme Court approved these rates in 1913 and that this should be a conclusive test of the reasonableness of the general level of the present intrastate North Dakota rates. A somewhat similar contention was advanced in *Trier v. C., St. P., M. & O. Ry. Co.*, 30 I. C. C. 352, where we said:

That decision [*Minnesota Rate Cases*, *supra*] held, in the cases of the Northern Pacific and Great Northern companies, "that the proof is insufficient to justify the finding that the rates were confiscatory * * *." For this reason the court dismissed the bill of the Northern Pacific Railway Company without prejudice.

* * * * *

In the instant case the Commission is asked to accept as a sufficient determinant of the injustice and unreasonableness of an interstate fare the single fact that a lower rate per mile as applicable to the traffic wholly within one state partly traversed in making said journey has been judicially upheld by the Supreme Court. The finding of that body was merely that the 2-cent fare per mile for intrastate Minnesota transportation had not been proved confiscatory and therefore was not unconstitutional. A rate or fare that is merely nonconfiscatory may fall short of one which is entirely just and reasonable. Complainant rests his whole charge that the interstate fares collected are unjust and unreasonable on the ground that 2-cent per mile rate scale in one of the states traversed had not been shown, as far as intrastate business is concerned, to have been confiscatory. This is one fact, but only one fact, bearing upon the matter of justice and reasonableness.

The state submitted exhibits comparing the investment and expenses per mile of road of the North Dakota lines with the investment and expenses per mile of road of 185 roads in western classification territory. The statistics for North Dakota are said to be taken from reports of the carriers to the North Dakota commission and necessarily are allocated on a somewhat arbitrary basis. They are of very doubtful probative value in the absence of any further explanation.

Valuation figures, taken from the record before the North Dakota commission, were also submitted by which the state seeks to establish that respondents are earning considerably in excess of 6 per cent on the value of their North Dakota property. In view of what we have said in the *Illinois*, *Nebraska*, and *Nevada Cases*, 59 I. C. C., 350; 60 I. C. C., 305; *ib.* 623, of similar attempts to make a separate rate group of each state we need not detail this evidence or point out
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We further find that said undue prejudice, undue preference and advantage, and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore made as aforesaid under Ex Parte 74, and now in effect, upon passengers so traveling in interstate commerce.

We further find, subject to the exception above noted with respect to rates on milk and cream, that the increases made by the respondent steam railroads relating to freight rates and charges under Ex Parte 74 and now in effect result in reasonable rates and charges for interstate transportation, and that the failure of said respondents to correspondingly increase their rates and charges for intrastate transportation within the state of North Dakota has resulted and will result in intrastate rates and charges lower than the corresponding rates and charges maintained on interstate traffic within the state of North Dakota, and between points in the state of North Dakota and points in other states, in undue preference of and advantage to shippers of intrastate traffic within the state of North Dakota, in undue prejudice to shippers of interstate traffic, and in unjust discrimination against interstate commerce.

We further find that said undue preference, undue advantage and prejudice, and unjust discrimination can and should be removed by making increases in said intrastate rates and charges as in effect July 29, 1920, which shall correspond with the increases heretofore made by said respondents as aforesaid under Ex Parte 74 and now in effect in their interstate rates and charges.

We further find that, whether the aforesaid passenger fares, excess-baggage charges, surcharges, or freight rates and charges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

The above findings are abundantly supported by the record, but are without prejudice to the right of the authorities of the state of North Dakota or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate rates, fares, or charges on the ground that the latter are not related to the interstate rates, fares, or charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissents.

No. 11172.

RUTHERFORD-BREDE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted October 22, 1920. Decided March 3, 1921.

Defendant's failure to equip refrigerator cars with temporary false floors for transportation of potatoes, in carloads, under carriers' protective service against freezing, from Quamba, Minn., to interstate destinations, found not in violation of the statutes cited. Complaint dismissed.

O. W. Tong for complainants.

John F. Finerty and *F. G. Dorety* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

At the argument complainants stated their exceptions to the report proposed by the examiner.

Complainants are A. C. W. Rutherford and Carl J. Brede, co-partners trading as Rutherford-Brede Company, and wholesale dealers in potatoes at Minneapolis, Minn. By complaint filed January 19, 1920, they allege that the failure and refusal of defendants to equip cars with false floors to protect the lading from freezing in connection with the transportation of nine carloads of potatoes, shipped under "carriers' protective service," from Quamba, Minn., to various interstate destinations, between January 18 and March 8, 1918, inclusive, was in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. They demand a just and reasonable allowance under section 15 of the act to regulate commerce in order to reimburse them for the cost of supplying false floors.

The rules and regulations of the Director General of Railroads, hereinafter termed defendant, for protective service provide that during the period from October 15 to April 15 a shipper of specified perishable commodities, including potatoes, must declare at the time of ordering a car whether he desires the car moved under "option No. 1," termed "shippers' protective service," or under "option No. 2," termed "carriers' protective service." Under option No. 1, the

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carrier furnishes the equipment, and if the shipper desires to install false floors or stoves and send a caretaker in charge he is at liberty to do so. At the time the shipments moved the tariffs provided for outbound and return transportation of the fittings and caretaker under certain conditions without extra charge. Under option No. 2 the shipper pays an extra charge, varying from 5 to 7 cents per 100 pounds, for the protective service, the carrier assumes liability for damage to the commodity by freezing or overheating, and it is customary for the carriers to furnish in extremely cold weather cars with false floors and such other facilities and services as are necessary to prevent potatoes from freezing.

The tariff does not specify any particular type of equipment which the carrier must furnish under option No. 2, and does not authorize payment to a shipper of the expense of installing temporary false floors.

Complainants' buyer, at the beginning of the year 1918, ordered the nine cars from defendant's agent at Mora, Minn., to be placed at Quamba, a point on the line of the Great Northern, for the shipment of potatoes to move under option No. 2. Refrigerator cars were placed for loading, of which four were Great Northern cars equipped with permanent false floors; the others were not so equipped. Complainants' witness testified that he was advised by complainants' employee that defendant's local agent refused to accept the potatoes for shipment under option No. 2 unless the shippers installed temporary false floors in all cars; that as a consequence complainants supplied such floors at their own expense for the nine cars; and that defendant's agent told this employee that defendant would reimburse complainants for this expenditure. Defendant admits that the costs claimed by complainants, averaging \$7.40 per car, are reasonable and represent the actual cost. Complainants paid a charge of 6 cents per 100 pounds for the special protection under option No. 2 in addition to the transportation charges.

Defendant's witness testified that a letter from this local agent stated: "shipper did not receive any permission from us to furnish linings," although he admitted that at certain stations in Minnesota in the vicinity of Quamba there had been "some specific arrangements" made between shippers and defendant's agent relative to furnishing temporary false floors.

Complainants' witness further testified, and defendant conceded, that the permanent false floors in the Great Northern's refrigerator cars did not afford sufficient protection for potatoes during severely cold weather, which was true also of the refrigerator cars without permanent false floors, and that it was the custom of defendant to install temporary false floors in all such cars under option No. 2 during the time of year at which the nine cars moved. The initial

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line required its connecting lines to return these and similar false floors to it, or to pay to it \$12 per car. During the winter of 1917-1918 other shippers of potatoes in Minnesota experienced difficulty in getting adequately equipped cars at points on the Great Northern and defendant was not able to furnish cars with proper false floors at such points.

Defendant contends that there is no competent evidence in the record of refusal to accept the shipments without the special floors; and that defendant, having taken the risk, had the right to furnish whatever equipment he considered necessary.

In view of the defendant's admissions that the cars were not and could not be properly equipped by him, and that damage was likely to result at that time unless temporary false floors were installed, complainants contend that they should not have been compelled to ship without such floors, knowing that the potatoes would be frozen in transit; and that such action on their part might have subjected them to criminal liability for deliberately destroying foodstuffs. They further contend that, having paid the charge of 6 cents per 100 pounds for the protective service, in addition to the usual transportation charges, a service which defendant failed fully to perform, they are entitled to a refund based upon the cost to them of furnishing the temporary false floors.

Section 15 of the act to regulate commerce contained the provision now found in paragraph (13) of section 15 of the interstate commerce act as follows:

the Commission may, * * * determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, * * *.

The United States Supreme Court, in *Interstate Com. Comm. v. Diffebaugh*, 222 U. S., 42, 46, said that our power thereunder is to fix the maximum to be paid as an allowance. In exercise of this power we may not require a carrier to make an allowance or fix the precise amount, and it is doubtful whether we can award damages for failure to pay except in cases where the allowance is published in the carrier's tariffs and is not more than reasonable for the service. We think that the amount here claimed is reasonable, but any redress to which complainants may be entitled would seem to rest with the courts.

Upon this record we are of opinion and find that defendant's failure to equip these refrigerator cars with temporary false floors, or to reimburse complainants for supplying them, was not in violation of the act to regulate commerce or of the federal control act. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 1263.

SUBSTITUTION OF 35 PER CENT FOR 33 $\frac{1}{3}$ PER CENT INCREASE IN THE CLASS AND COMMODITY RATES BETWEEN EASTERN AND SOUTHERN GROUPS AND THE SOUTHWEST.

Submitted April 19, 1921. Decided May 3, 1921.

1. Increases proposed in joint class and commodity rates between points in the southwest and points in defined territories east of the Indiana-Illinois state line and of the Mississippi River, Cairo, Ill., and south, constructed by the use of base rates to or from St. Louis, Mo., plus arbitraries or differentials east of St. Louis, found not justified.
2. Increases proposed in joint class and commodity rates between points in the southwest and points in defined territories east of the Indiana-Illinois state line, and the Mississippi River, Cairo, and south, originally established, and, prior to August 26, 1920, maintained on or intended to be on basis of lowest combination of local rates to and from the Mississippi River crossings, or other rate-basing points, found justified.
3. Increases proposed in joint rates on cane and logging cars, in straight or mixed carloads, and on wrought and cast iron pipe, found justified.
4. Increases proposed in joint rates on hides from Fort Worth, Tex., to eastern tanning points found justified.
5. Proposed increased joint rates on hides from Oklahoma City, Okla., to eastern tanning points found not justified.
6. Carriers required to cancel suspended schedules without prejudice to filing schedules publishing rates in accordance with bases found proper.

F. E. Andrews, F. A. Leland, B. F. E. Marsh, R. D. Coleman, and R. D. Williams for respondents.

Paul E. Blanchard for Armour & Company; *Nuel D. Belnap, John S. Burchmore, and Luther M. Walter* for Morris & Company and Wilson & Company; *R. D. Rynder* for Swift & Company; *H. J. Fernandez* for Monroe Chamber of Commerce, Shreveport Chamber of Commerce, and Texas Industrial Traffic League; *L. G. Macomber* for Toledo Chamber of Commerce and Ohio State Industrial League; *F. C. Tockle* for El Paso Chamber of Commerce; *James S. Davant* for Memphis Freight Bureau; *H. D. Rhodehouse* for Chamber of Commerce of Youngstown, Ohio; *C. C. Lassiter* for Southwestern Portland Cement Company; *M. A. Clark* for Central Foundry Company, United States Cast Iron Pipe Company, National Pipe Company, and Stockham Pipe & Fitting Company; and *D. F. Wood* for Binney & Smith Company, protestants.

REPORT OF THE COMMISSION.

ATTOCHISON, *Commissioner*:

By schedules filed to become effective December 18, 24, and 31, 1920, and January 15 and 31, 1921, respondents proposed to increase their joint class and commodity rates between points in the southwest, comprising Arkansas, Oklahoma, Louisiana west of the Mississippi River, and Texas, on the one hand, and points in certain rate groups, termed defined territories, east of the Indiana-Illinois state line, and the Mississippi River, Cairo, Ill., and south on the other. Numerous protests having been filed by interested shippers, the operation of the schedules was suspended until May 17, 1921.

The rates in the suspended schedules are of two general classes: (1) Joint rates between the points above referred to, composed of base rates between St. Louis, Mo., the base point, and the southwest, plus certain differentials or arbitraries east of the base point, and (2) joint rates between the points above referred to, applicable through all gateways, which were originally established on the basis of the lowest available combination via any gateway, and which, on August 25, 1920, were, or were intended to be, on that basis.

In *Increased Rates, 1920*, 58 I. C. C., 220, hereinafter referred to as *Ex Parte 74*, we divided the country into four rate groups or territories and authorized the following increases in interstate rates within the respective groups: eastern group, 40 per cent; southern group, 25 per cent; western group, 35 per cent; mountain-Pacific group, 25 per cent. As to rates between points in different groups constructed by the use of combinations we said that the through rates should be increased by applying to each factor its respective percentage, while as to joint or single line through rates between points in one group and points in other groups we authorized an increase of 33½ per cent.

The two classes of joint rates above described, being interterritorial, were accordingly increased 33½ per cent, and respondents in this proceeding propose to further increase them or to decrease them to the extent and for the reasons hereinafter given.

JOINT RATES ON DIFFERENTIAL BASIS ON ST. LOUIS.

These rates are and have been generally less than the sum of the intermediates through any gateway. The base rates and arbitraries are separately stated in the tariffs in some cases, while in others the rates from point of origin to destination are expressed in specific amounts. Respondents propose to increase the factors of these joint rates west of St. Louis by 35 per cent, instead of 33½ per cent, over the rates in effect on August 25, 1920, which would result in an increase of 35 per cent.

crease in the interterritorial rates to the extent of $1\frac{1}{2}$ per cent of the base rates as they existed August 25, 1920, between St. Louis and points in the southwest. No further increase in the differentials is proposed and the joint rates proposed would usually continue to be less than the sum of the intermediates.

Respondents estimate that the increases would average about 1 cent per 100 pounds on carload and 2 cents per 100 pounds on less-than-carload traffic. In some instances the increases would amount to as much as 5 cents per 100 pounds. The justification offered is that such increases tend to restore the relationship that formerly existed between the rate-basing point and points in the defined territories on traffic from or to the southwest, and obviate the necessity for publishing two rates between the southwest and the basing point, one applicable locally and on traffic from or to points in the western group, and the other on traffic from or to points in the defined territories in the eastern group. For example, prior to August 26, 1920, rates between Texas common points and St. Louis were the same regardless of whether the traffic originated at or was destined to St. Louis or beyond. On that date the base rate was increased $33\frac{1}{4}$ per cent, whereas the local rate west of the base point was increased 85 per cent. Under the suspended schedules the base rate and the local rate west of the base point are the same. Respondents state that the proposed revision of these joint rates is not for the purpose of increasing revenue, although advances in rates will result in every instance. While the revision would restore the relationship formerly existing between the base rate and the local rate to the base point, it would not, as respondents contend, restore the preexisting relationship between the base point and points in the defined territories, but on the contrary would result in widening the rate spread between the base point and such points. The exigencies of tariff publication are not sufficient justification for the increases proposed.

We find that respondents have not justified the proposed increased joint class and commodity rates between points in the southwest on the one hand, and points in defined territories east of the Indiana-Illinois state line and of the Mississippi River, Cairo, and south, on the other hand, constructed by the use of base rates to or from St. Louis plus arbitraries or differentials east of St. Louis. An order will be entered requiring the cancellation of the suspended schedules as to these.

JOINT RATES BASED ON LOWEST AVAILABLE COMBINATION.

In addition to the many joint rates made by the use of differentials or arbitraries in connection with base rates, there were, prior to August 26, 1920, other joint rates between the southwest and points

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in the defined territories in the eastern or southern groups as defined in Ex Parte 74. These joint rates were usually point-to-point rates, were constructed upon the lowest available combination on the Ohio or Mississippi river crossings or other points, and applied alternatively with the joint rates constructed by the use of differentials in connection with base rates. These joint rates on the basis of the lowest combination were published by way of all available routes under permissive fourth section orders to avoid fourth section violations on the route over which the combination was constructed and to equalize via other routes the rates so constructed. On northbound traffic joint rates on a differential basis have generally been limited to points in the Cincinnati and Louisville groups, and when traffic is destined to points in the defined territories other than those mentioned the joint rates based on lowest combination are the only ones available. Frequent changes have occurred in all these rates by reason of the components of the combination being changed, and it has often occurred that joint rates originally established on basis of the lowest combination over one junction point were subsequently revised so as to equal a lower combination effective over some other junction. Owing to failure from time to time to correct certain of these joint rates to reflect changes in the individual factors, and to failure to discover or publish as joint rates lower combinations via other gateways, a number of the joint rates appearing in the tariffs on August 25, 1920, did not reflect the basis they were intended to make effective, viz, the lowest available combination. As stated, these joint rates being published interterritorially were increased $33\frac{1}{3}$ per cent under Ex Parte 74, while contemporaneously the local rates to and from the basing points, upon basis of which such joint rates were originally constructed, were increased 35 per cent west of the basing point, 40 per cent in the eastern group, 25 per cent in the southern group, and $33\frac{1}{3}$ per cent when applying east of the base point located in one territory to destinations in other territories.

By the schedules under suspension respondents propose to revise these joint rates to equal the present lowest available combination of local rates. On traffic between the southwest and points in the defined territories located in the eastern group, the result would be an additional increase over the rates in effect on August 25, 1920, of approximately $1\frac{1}{3}$ per cent in the factors of the rates between the southwest and St. Louis, and of $6\frac{1}{3}$ per cent in the factors of the rates between St. Louis and points in the defined territories in the eastern group. The exact percentage of increase depends on the extent to which the joint rates now fail to reflect the lowest available combination. Between points in the southwest and points in the southern group the joint rates in many cases exceed the aggre-

gate of intermediates, as the factors west of the Mississippi have been increased 35 per cent and the factors east of the river 25 per cent, while the joint rates were increased $33\frac{1}{2}$ per cent. It is proposed to correct this situation by revising these rates to the lowest available combination. Usually such changes result in reductions.

As to those joint rates which on August 25, 1920, were alternatively applicable with joint rates constructed by the use of base rates in connection with arbitraries and which were intended to reflect the lowest available combination, and originally constructed upon that basis, it was not our intention to suspend any revisions of rates which reflected the current lowest combinations. Parties to the proceeding were advised that where joint rates on the basis of the lowest combination were suspended, upon proper showing, the orders of suspension would be vacated. Vacation orders have been issued in connection with many of such rates. We may mention the rate on carbon black from Monroe, La., to eastern points, as to which vigorous protests were made.

As above noted, many of these alternative joint rates as in effect August 25, 1920, did not reflect the lowest available combination due to errors of compilation and other causes. Accidents of tariff publication alone should not operate to continue rates upon a basis different from that upon which they were established and intended to be maintained. The revision here proposed does nothing more than to make these joint rates reflect what they purport to be—the actual lowest combination of separately established rates available via any gateway.

We find that the proposed joint rates originally established, and prior to August 26, 1920, maintained on or intended to be on basis of lowest available combination via any gateway, have been justified. The accuracy of many of these rates now under suspension has been challenged, and respondents have not in all cases furnished information showing the factors upon which such rates are based. Respondents will be required to cancel these rates, without prejudice to republishing them on the basis of the lowest available combination, which basis should be shown in the items.

CANE AND LOGGING CARS.

Prior to August 26, 1920, the St. Louis rates on cane and logging cars, in straight or mixed carloads, applied to points in Mississippi from points in Texas and those joint rates were increased $33\frac{1}{2}$ per cent on that date as authorized in Ex Parte 74, whereas the rates from points in Texas to St. Louis were increased 35 per cent. By the tariffs under suspension respondents propose to increase these joint

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rates on cane and logging cars to the present St. Louis basis. It is stated that but for the fact that they were published in items separately from the St. Louis rate, they would have been increased 85 per cent on August 26, 1920. The proposed increase in these rates is 1 cent per 100 pounds. No protestant as to these rates appeared at the hearings. The proposed increased rates are justified, and the order of suspension will be vacated as to these.

WROUGHT AND CAST IRON PIPE.

It is also proposed to increase the joint rates on wrought and cast iron pipe from Birmingham, Ala., Chattanooga, Tenn., and other iron-producing points in the southeast included in the Nashville group to points in Oklahoma. These rates, like the rates in the reverse direction on cane and logging cars, prior to August 26, 1920, were the same as the St. Louis rates but were published in separate items in the tariffs. They were increased 33½ per cent on August 26, and respondents now propose to restore them to the St. Louis basis, which will result in an increase of 1 cent per 100 pounds. The present St. Louis rate applies from the same iron-pipe-producing points in the southeast to many points in Texas, and by way of several routes the Texas points are directly intermediate to points in Oklahoma. This departure from the long-and-short-haul provision of the fourth section exists also in the rates from many points in central territory where the rates are made by combination over St. Louis. In order to correct these fourth section departures, as well as to restore the former relationship between the Texas and Oklahoma points on iron pipe from southeastern producing points, respondents propose the increases in the rates to the points in Oklahoma. The present rates per 100 pounds are 66.5 cents and the proposed rates 67.5 cents to many representative points ranging from 616 to 832 miles from Birmingham. The proposed joint rates are lower than the rates on iron pipe from the southeastern producing points to points in Kansas for comparable distances. We are of the opinion and find that respondents have justified the proposed joint rates, and the order of suspension will be vacated as to these.

HIDES.

On the alleged ground that it will restore the joint rates to the former basis of the lowest combination, respondents also propose to increase their rates on green salted hides, pelts, and skins from Oklahoma City, Okla., Fort Worth, Tex., and other points to eastern tanning points. The rates on hides from Oklahoma City were before us in December, 1914, in *Crowdus Bros. v. A. T. & S. F. Ry. Co.*, 29 I. C. C., 449, and 32 I. C. C., 355, hereinafter referred to as the 61 I. C. C.

No. 11052.

STEEL & TUBE COMPANY OF AMERICA ET AL

v.

DIRECTOR GENERAL, AS AGENT, MICHIGAN CENTRAL
RAILROAD COMPANY, ET AL.

Submitted November 15, 1920. Decided May 3, 1921.

Rate on steel car-plates, in carloads, during federal control, from Indiana Harbor, Ind., to Michigan City, Ind., found unreasonable. Reparation awarded.

Butler, Lamb, Foster & Pope and Ernest S. Ballard for complainants.

D. P. Connell and John F. Finerty for defendants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Exceptions were filed by defendants to the report proposed by the examiner and oral argument was made before us.

The principal complainant is Steel & Tube Company of America, which was incorporated on July 1, 1918, and on July 31, 1918, acquired and took over the entire property, assets, and business of Mark Manufacturing Company, the other complainant, a corporation. It will, therefore, be treated as the sole complainant. Included in the property so acquired was a plant for the production of steel car-plates at Indiana Harbor, Ind. Between July 28, 1918, and February 26, 1919, both inclusive, complainant shipped from this plant over defendant carriers' lines numerous carloads of steel car-plates consigned to the Haskell & Barker Car Company, hereinafter called the car company, at Michigan City, Ind.

By complaint filed December 3, 1919, it is alleged that the rate of 14 cents charged and collected on these plates by defendants was unreasonable, in violation of the act to regulate commerce and the federal control act, to the extent that it exceeded the rate of 6 cents subsequently established. Reparation only is sought. Rates are stated in cents per 100 pounds.

This country was then at war. A board known as the American Iron and Steel Production Board, a branch of the War Industries

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Board, had been established and given absolute authority by the government to allocate all government purchases of iron and steel articles. Acting under this authority it placed with Mark Manufacturing Company in June, 1918, an order for 14,590 tons of car-plates to be shipped to the car company at Michigan City for use in construction of box and gondola cars for the United States Railroad Administration. At about the same time it placed other government orders with Mark Manufacturing Company for car-plates to be shipped to car-building shops at Pullman (Chicago) and Mount Vernon, Ill., St. Louis, Mo., and Bettendorf, Iowa.

Indiana Harbor is situated on the extreme eastern border of the Chicago switching district. Rates therefrom were also applicable from all other points in that district. For a number of years prior to October, 1914, there had been in effect on iron and steel articles from the Chicago district to Michigan City a commodity rate of 4 cents. On October 26, 1914, this was increased to 4.2 cents in harmony with our conclusions in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325. The application of this commodity rate over the different lines was canceled in December, 1917, and January, 1918, leaving in effect a fifth-class rate of 11 cents, which was increased before these shipments moved to 14 cents under general order No. 28 of the Director General of Railroads. In establishing the 11-cent rate the carriers apparently used the distance to Michigan City from the most remote point in the Chicago district, the rate being that for the 70-mile block authorized in *C. F. A. Class Scale Case*, 45 I. C. C., 254, increased 15 per cent under *The Fifteen Per Cent Case*, 45 I. C. C., 303.

The distance from Indiana Harbor to Michigan City is 33 miles. Complainant's witness stated, without contradiction, that this fairly represented the average weighted eastbound haul on iron and steel from the entire Chicago district, as iron and steel production in that district is mainly confined to the eastern part thereof. In *C. F. A. Class Scale Case* we authorized a fifth-class rate for this distance of 7.7 cents, which, increased by 15 per cent under *The Fifteen Per Cent Case*, became 9 cents.

The distances from Indiana Harbor to the car-building shops referred to and the rates applicable during the period named were:

To—	Distance.	Rate.	Remarks.
	Miles.	Cents.	
Michigan City, Ind.	33	14	Fifth-class rate.
Pullman (Chicago), Ill.	19	2.5	Chicago district rate.
Mount Vernon, Ill.	276	12	Commodity rate.
St. Louis, Mo.	279	12	Do.
Bettendorf, Iowa.	190	10.5	Do.

The rate disparity was so glaring that immediately upon allocation of these orders Mark Manufacturing Company sought from the defendant carriers a reduction in the Michigan City rate. The matter was also taken up with the Chicago Eastern District Freight Traffic Committee of the Railroad Administration, and from June, 1918, to March, 1919, was vigorously prosecuted. On March 12, 1919, the committee advised complainant that authority had been granted to establish a commodity rate of 6 cents from the Chicago district to Michigan City, which became effective in April, 1919. This rate, said by complainant to be based on the commodity rate of October 26, 1914, increased by 15 per cent under *The Fifteen Per Cent Case*, and the aggregate increased by 25 per cent under general order No. 28, was in effect at the time of the hearing and is satisfactory to complainant.

From complainant's exhibits setting forth all points in the so-called "short-haul territory"¹ in eastern Ohio and western Pennsylvania from and to which a rate of 5.5 cents was published it appears that this rate applied from 88 points of origin to many destinations for an average haul of 33 miles. In some instances the distance is over 100 miles. There was also in effect a rate of 14 cents for an average haul of 178 miles from 8 points of origin in Indiana, Ohio, and Pennsylvania to numerous interstate and intrastate destinations. The 14-cent rate from Indiana Harbor to Michigan City yielded a ton-mile revenue of 8.5 cents; and, based on 106,713 pounds, the average weight of these shipments, a car-mile revenue of \$4.50. The subsequently established rate of 6 cents yielded 3.6 cents per ton-mile and \$1.94 per car-mile.

In defense of the 14-cent rate defendants urge that the general adjustment in central territory is and has been for many years on the fifth-class basis; that the short-haul territory rates, cited by complainant, are low and were established to take care of manufacturing conditions peculiar to that territory; that at the time the federal government assumed control of the railroads the carriers had on file with us fifteenth section applications seeking authority to cancel these short-haul territory rates as well as one or two other exceptional adjustments, but subsequently withdrew them under instructions from the director of traffic of the Railroad Administration; and that complainant's evidence merely proves what is freely admitted, viz, that there are still some low commodity rates on this traffic in central territory.

¹ Roughly described as being bounded by Cleveland and Lorain, Ohio, and Erie, Pa., on the north; Canton, Dover, and Akron, Ohio, on the west; Wheeling, W. Va., on the south; and Cumberland, Md., and Johnstown, Pa., on the east.

Defendants also contend that the cancellation of the commodity rate of 4.2 cents, and of all other commodity rates on iron and steel articles in central territory, was authorized and approved by us in fifteenth section order No. 57 of October 26, 1917. Complainant questions the interpretation placed upon this order and applied to the adjustment here under consideration, particularly in view of the fact that the application on which it was issued specifically excepted "short-haul intra or inter mill or intra or inter district rates," claiming that the haul from Indiana Harbor to Michigan City clearly comes within this exception. We need not discuss further this phase of the controversy, for, regardless of any interpretation which may be placed upon that order, our sanction of a general adjustment does not carry with it the approval of any particular rate. *Globe Soap Co. v. A. & S. Ry. Co.*, 40 I. C. C., 121.

The record affirmatively shows, as defendants concede, that complainant was damaged to the extent of any difference between the rate paid and a reasonable rate. They earnestly insist that the rate paid was reasonable.

We find that the rate assailed was unreasonable to the extent that it exceeded 6 cents per 100 pounds; that complainant made the shipments described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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INVESTIGATION AND SUSPENSION DOCKET No. 1287.
IRON POLES, PIPES, AND CONNECTIONS BETWEEN
MISSISSIPPI RIVER CROSSINGS AND IOWA POINTS.

Submitted March 22, 1921. Decided May 4, 1921.

Proposed increased proportional rates on iron or steel pipe, on iron or steel telegraph, telephone, and electric-railway poles, and on pipe connections, couplings, and fittings, in carloads, east-bank upper Mississippi River crossings to interior Iowa points found not justified. Suspended schedules ordered canceled.

Walter H. Jacobs, J. N. Davis, and Robert H. Widdicombe for respondents.

J. H. Henderson and Walter Condran for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

By schedules filed to become effective January 23, 1921, respondents propose to cancel proportional commodity rates on wrought or cast iron or steel pipe, iron or steel telegraph, telephone, or electric-railway poles, and pipe connections, couplings, and fittings, in carloads, from east-bank upper Mississippi River crossings to points in interior Iowa. The proposed cancellations would leave applicable higher proportional fifth-class rates from west-bank Mississippi River crossings, except in a few instances where a lower combination might be made, based on Chicago, Ill., or other junctions east of the Mississippi. Upon protest the schedules were suspended until June 22, 1921. As the present rates are the same on all these commodities, reference to wrought-iron pipe will include the other commodities unless otherwise indicated. Rates will be stated in cents per 100 pounds unless otherwise specified.

In *Interior Iowa Cases*, 46 I. C. C., 39, decided July 7, 1917, we prescribed a proportional class scale on traffic to and from points east of the Indiana-Illinois state line, to be applied between the west bank of the Mississippi and interior Iowa cities and stated that the carriers would be expected to adjust their commodity rates to conform

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thereto. During federal control the Railroad Administration established proportional commodity rates from the Mississippi to points in interior Iowa on from 50 to 60 commodities, including wrought-iron pipe, effective March 31, 1919. In doing so, the principle upon which the class scale had been fixed by us was observed. The present and proposed proportional rates to representative points in interior Iowa and to Sioux City, Iowa, a Missouri River point, are shown in the following table, with distances from the nearest Mississippi River crossing, that being the basis on which the proportional class rates to interior Iowa points were established:

	Distance.	Present commodity rate.	Proposed fifth-class rate.	Increase.
	Miles.	Cents.	Cents.	Cents.
Mississippi River crossings to—				
Cedar Rapids.....	59	9.5	10	0.5
Ottumwa.....	70	9.5	10	0.5
Waterloo.....	93	11	12	1
Marshalltown.....	147	17	19	2
Des Moines.....	155	17	19	2
Mason City.....	171	19.5	22.5	3
Fort Dodge.....	192	23	25.5	2.5
Sioux City.....	225	30.5	30.5	.....

Respondents refer to the following statement in *Western Trunk Lines Iron and Steel*, 47 I. C. C., 109, 128: "We think that the use of the fifth-class proportional rates there prescribed [*Interior Iowa Cases, supra*,] has been justified as to shipments of iron and steel articles and pipe from east of the Indiana-Illinois state line, moving on combination rates made on the Mississippi River." They contend that the present proportional commodity rates were inadvertently established and that the proposed cancellation is for the purpose of making effective the basis approved by us.

When *Western Trunk Lines Iron and Steel, supra*, was decided, commodity rates on wrought-iron pipe were in effect from the territory east of the Indiana-Illinois state line to both east-bank and west-bank Mississippi River crossings. Subsequently there was a general cancellation of these rates and proportional class rates to the east-bank crossings have since applied. The latter are generally lower than the local rates to either the east-bank or west-bank crossings. There are no proportional class rates to the west-bank crossings and as the proposed rates apply only from the west bank, cancellation of the present rates will result in application of local class rates to west-bank crossings on wrought-iron pipe destined to interior Iowa. Accordingly, the difference between the present and proposed rates does not measure the increase in the through charges that will result on traffic originating east of the Indiana-Illinois state line if the proposed cancellation becomes effective. This is illustrated in the following I. C. C.

lowing table of rates on wrought-iron pipe from Cincinnati and Addyston, Ohio:

To—	Rate.		Increase.	
	Present.	Proposed.	In through rate.	In component west of Mississippi River.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Cedar Rapids.....	42.5	40.5	4	0.5
Ottumwa.....	42.5	40.5	4	.5
Waterloo.....	44	43.5	4.5	1
Marshalltown.....	50	55.5	5.5	2
Des Moines.....	50	55.5	5.5	2
Mason City.....	52.5	50	0.5	3
Fort Dodge.....	56	62	6	2.5
Sioux City.....	63.5	63.5		

The present commodity rates on cast-iron pipe from producing points in Ohio are lower to east-bank Mississippi River crossings than to the west bank. From Cincinnati and Addyston the rate is \$4.76 per ton to the east bank and \$6.16 per ton to the west bank. If the proportional commodity rates from the east bank are canceled the rate of \$6.16 would apply as the component east of the Mississippi River.

Respondents show that the proportional fifth-class rates from Clinton, Iowa, to interior Iowa points on the Chicago & North Western are lower than rates for similar distances approved by us in *C. F. A. Class Scale Case*, 45 I. C. C., 254, for application in zone A, central territory, where rates are generally on a lower basis than west of the Mississippi, plus percentage increases subsequently authorized. The value of this comparison, as well as of others submitted by respondents, is impaired because the distances used are not those from the nearest Mississippi River crossings, but the longer distances over the Chicago & North Western. For example, respondents use 223 miles as the distance from Clinton to Des Moines, whereas Des Moines is 155 miles from the nearest Mississippi River crossing, and it is that distance which we used in determining the rate to Des Moines under the proportional class scale prescribed in *Interior Iowa Cases*, *supra*. Furthermore, the rates west of the Mississippi are proportional rates used in combination with components which represent hauls of 400 miles or more east of the river.

Respondents compare the proposed rates from Pittsburgh, Pa., and Martin's Ferry, Ohio, to interior Iowa destinations with rates from the same points to destinations in Minnesota and Wisconsin for approximately the same distances. The latter rates are generally as high or higher, but, as there is no showing of the circumstances and

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conditions under which they were established and are maintained, the comparison is not convincing as proof of the reasonableness of the proposed rates. The evidence introduced by respondents relative to the percentage the proposed rates bear to the Chicago-St. Paul, Minn., rate is not regarded as of particular significance in this proceeding in view of the established relationship between the rates to interior Iowa points and the Mississippi River-Missouri River rates.

Because of deferred construction during the past few years by public utility companies and others using iron or steel pipe, a marked increase in tonnage to Iowa points is expected. Practically all iron or steel pipe used in this section originates east of the Indiana-Illinois state line. Jobbers at interior Iowa points purchase the pipe in carload lots and as a rule sell in less-than-carload lots. The pipe is bought and sold on the Pittsburgh basis, i. e., the price at Pittsburgh plus freight from Pittsburgh to point of delivery, regardless of the point from which shipped.

Jobbers at interior Iowa points compete with jobbers located at Mississippi River cities and Chicago on the east, Missouri River cities on the west, and St. Paul and Minneapolis, Minn., on the north. The effect of the proposed rates upon the interior Iowa jobbers will be, they contend, to circumscribe materially their jobbing territory and give an undue advantage to their competitors located at points to which no increase is proposed. They instance Fort Dodge, to which the present proportional rate on wrought-iron pipe from the Mississippi River is 23 cents, the proposed class rate 25.5 cents, and the distance from Dubuque, Iowa, the nearest Mississippi River crossing, 193 miles. To Sioux City, a Missouri River city, the proportional rate is 30.5 cents and the distance from Dubuque 325 miles. The distance to Fort Dodge is 59.3 per cent of that to Sioux City and the present and proposed Fort Dodge rates are 75.4 and 83.6 per cent, respectively, of the Sioux City rate. The present proportional rate to Fort Dodge is 90.2 per cent, and the commodity rate to Sioux City 89.7 per cent, of the respective fifth-class rates. Respondents propose to apply the full proportional fifth-class rate on wrought-iron pipe to Fort Dodge without making any change in the rate to Sioux City.

The rate on wrought-iron pipe from Chicago to Mississippi River crossings, St. Louis, Mo., to Dubuque, Iowa, is 19.5 cents for distances from 138 to 279 miles, and ranges from 61.9 to 81.25 per cent of the corresponding fifth-class rates.

Protestants call attention to the fact that if the present rates are canceled increased charges on carload mixtures of pipe connections and fittings will result. Not exceeding one-third of the carload weight may now consist of brass or bronze valves and brass pipe

fittings. These commodities are rated second class in less than carloads, and fourth class in carloads, minimum 30,000 pounds in western classification. If the proposed cancellation became effective the highest class carload rate, fourth class, and the highest carload minimum, 36,000 pounds, or the fifth-class carload rate on the iron connections, couplings, and fittings and the second-class less-than-carload rate on the brass or bronze valves and fittings would be applicable. There would be no change in the rates on such mixtures to points from which the jobbers at interior Iowa cities meet competition.

Protestants submitted a list of 25 commodities rated fifth class in carloads, including wrought-iron pipe, on which proportional commodity rates are in effect from the Mississippi River crossings to interior Iowa points. Under the rates to Fort Dodge the ton-mile earnings average 19.4 mills, are 23.8 mills on wrought-iron pipe, and on the other 24 commodities range from 12.4 mills on green hides to 24.3 mills on sirup. A basis lower than fifth class prevails generally throughout western trunk line territory on wrought-iron pipe, in carloads.

There have been material changes in transportation and traffic conditions since our decision in *Western Trunk Lines Iron and Steel, supra*, and, as noted, the particular rate adjustment in issue, as it now comes before us, is upon a different basis. We find that the suspended schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

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INVESTIGATION AND SUSPENSION DOCKET No. 1284.

SWITCHING BETWEEN CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS INCLINE TRACKS AND CONNECTIONS AT CAIRO, ILL.

Submitted April 2, 1921. Decided May 4, 1921.

Proposed cancellation of switching charges at Cairo, Ill., found not justified.
Suspended schedules ordered canceled.

D. P. Connell for respondent.

Ray Williams for Cairo Association of Commerce and Cairo Board of Trade, protestants.

U. S. Musick for Cairo Association of Commerce, protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to become effective January 20, 1921, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, hereinafter called respondent, proposes to cancel the switching charges applicable between its incline or river track and connecting lines' tracks at Cairo, Ill., and from its track barge to connecting lines' tracks at the same place, thereby making applicable class distance rates which are higher. Upon protest the schedules were suspended until June 19, 1921.

Cairo is at the confluence of the Mississippi and Ohio rivers, and is served by boats during the season of navigation which ordinarily continues throughout the year. It is also served by the rails of the Illinois Central, Missouri Pacific, Mobile & Ohio, St. Louis Southwestern, and respondent. The Illinois Central and respondent have track barges at Cairo, so constructed that the track levels thereon may be raised and lowered with the rise and fall of the river. They provide a means for direct transfer from the boats or barges to cars. Respondent's incline or river track is substantially a continuation of the rails from the track barge.

The present charge between the incline or river track and tracks of connecting lines, not including placing the cars on boats or barges, is \$4. On June 25, 1918, a charge of \$6.50 from the track barge to
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tracks of connecting lines was published in respondent's "Industrial Carload Tariff," I. C. C. 7152. This charge was later increased to \$8.50, and is now \$9. On February 29, 1920, a charge of \$5 was published in respondent's "Switching Tariff," I. C. C. 7218, for the same service covered by the present \$9 charge. By blanket supplement filed under our authority of July 29, 1920, the \$5 charge was increased to \$7. The switching limits and industrial limits of Cairo are defined exactly alike in these two tariffs. Neither the \$5 nor the \$7 charge was ever legally applicable, as the previously established charge, now \$9, was not specifically canceled.

The Illinois Central maintains similar charges at Cairo and has taken no steps to cancel them.

The distances from the incline or river track to the tracks of connecting lines are not shown, but appear to be less than 5 miles. Respondent's distance class rates for 5 miles and under range from 6.5 cents per 100 pounds on commodities rated class E to 32 cents on commodities rated first class. The charges on a carload of 50,000 pounds at the class-E rate would be \$32.50.

Respondent seeks to justify the proposed cancellation on the ground that the incline or river track and track barge are its private terminal facilities, the use of which it does not desire to extend to its connections; that the amount of traffic affected is inconsiderable; and that the present charges are not compensatory. The facilities are for use by all river craft, and respondent has maintained switching charges for the services in question since 1906. Very little traffic from river points has moved over the track barge and incline in recent years, but the possibility of such movement still exists. Respondent's estimate of the cost of switching to tracks of connecting lines exceeds \$9 per car and is not persuasive. Respondent has not proposed to cancel its charge for switching to industries on its own line. Its switching charge on lumber and articles taking lumber rates over the track barge to such industries is \$1.50 per car.

Protestants contend that the effect of the proposed cancellation would be the virtual exclusion of all industries at Cairo from the services under consideration except those located on respondent's line.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

No. 11067.

EDGE MOOR IRON COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND PENNSYLVANIA
RAILROAD COMPANY.

Submitted October 23, 1920. Decided May 5, 1921.

Failure of defendants to perform the spotting service at complainant's plant at Edge Moor, Del., or to make complainant an allowance for performing that service, found not to have subjected or to subject complainant to unreasonable, unjustly discriminatory, or unduly prejudicial rates. Complaint dismissed.

Frank Lyon and John H. Nelson for complainant.

Henry Wolf Bikelé for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS DANIELS, AITCHISON, AND EASTMAN.

DANIELS, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by the parties and oral argument has been had thereon.

Complainant is a corporation engaged in the manufacture of boilers at Edge Moor, Del., about 3 miles north of Wilmington, Del. It alleges that since June 5, 1917, it has with its own motive power and labor moved cars between points in its plant and the point of interchange with the Pennsylvania Railroad without compensation; that the service is a transportation service which defendants should perform or pay for having done; that an allowance of \$1.22 per car is paid by defendants to the American Bridge Company, whose plant adjoins that of complainant, for performing a similar service; and that complainant has been subjected to the payment of rates and charges which are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe a reasonable allowance under section 15 of the interstate commerce act and to award reparation.

The real object of the complaint is to secure an allowance for the spotting service rather than to have the service performed by the
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Pennsylvania Railroad, hereinafter termed defendant. The movement of the cars is described in some detail, but for the purposes of this report it is sufficient to state that cars consigned to or from the Edge Moor Iron Company and the American Bridge Company are interchanged with defendant on tracks of the latter in front of the bridge company's plant. They are moved to and from these tracks by the power of the respective industries. Cars taken to or from complainant's plant are moved by it over defendant's rails about 1,000 feet beyond the interchange point in addition to the haul over the plant tracks. Inbound and outbound rates charged complainant are the same as those charged the bridge company on like commodities to or from the same points. The bridge company, as alleged, receives an allowance of \$1.22 on each car, while complainant's spotting service is at its own expense.

It was conceded by defendant that in its essential features the situation shown of record is substantially similar to that upon which defendant elected to grant an allowance to the bridge company except for the use by complainant of a locomotive crane instead of a locomotive of ordinary type. This locomotive crane consists of a platform mounted on standard trucks and having standard couplers, air brakes, and other equipment which carries a crane in addition to the engine. The crane has no connection with the propulsion of the locomotive or cars, and is not connected with the engine except when in use for loading or unloading freight. In other words, the locomotive crane performs the functions of the ordinary locomotive of similar power, and in addition has the crane mounted on the same platform instead of being on a flat car which could be coupled to the locomotive. The horsepower of the engine is about 75 per cent of that used by the bridge company, and is sufficient for the service in which it is used.

Defendant has never performed the spotting service for complainant, but the record does not indicate that the track arrangement at either plant is unusually complicated or that the defendant would be unable to perform that service. Defendant insists that the line-haul rates charged on complainant's commodities are not unreasonable *per se*, as no specific points of origin or destination have been named, no rate comparisons have been furnished, and the commodities upon which lower rates are sought are not specified, and that this case is readily distinguished from those in which allowances have previously been made and the carriers had failed to justify increased rates resulting from their cancellation. While a violation of section 1 is alleged, complainant asserts that but for section 15, dealing with allowances, this complaint would not have been filed with us.

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Complainant relies principally upon a comparison of the treatment of the bridge company, contrasting the services as well as the circumstances and conditions at that plant with those at complainant's industry. Complainant never requested defendant to perform the spotting service in question but now insists upon an allowance rather than to have defendant perform that service. Transportation must be furnished upon reasonable request therefor, but the record does not indicate that defendant would have refused to have performed the spotting service in question had complainant requested it. It appears that the bridge company made application to carriers' general accounting committee for an allowance, and defendant elected to make an allowance since September 15, 1917, in lieu of performing the spotting service. Unquestionably a carrier has a right to perform any transportation service that is required of it, but it may elect to hire the industry or some one else to perform that duty. The tracks into complainant's plant are owned and controlled by complainant.

In *Empire Steel & Iron Co. v. Director General*, 56 I. C. C., 158, a situation was disclosed regarding the Thomas Iron Company which in many particulars resembles that developed of record except that there is no competition in the sale of products between complainant and the bridge company. In that case there was the added element of competition between the Thomas Iron Company and the companies receiving the allowance or the spotting service. It was shown that the iron company performed at Hokendauqua, Pa., with its own power a certain spotting service; that it was the practice of the trunk lines to perform the spotting service, or have it performed, for competitors on the basis of the line-haul rates; and that additional costs for spotting could not be passed on to the Thomas Iron Company's customers. In denying reparation we said, pages 180, 190:

Where, as in this case, an industry has continuously performed the terminal or spotting services and apparently has preferred to do so, it cannot now be heard in a demand for compensation from the carriers for such past services. Under section 15 of the act the Thomas company for the future may lawfully be reimbursed for moving the outbound shipments to the Lehigh and the Central, unless the Lehigh and Central elect and offer to perform the work. A refusal on the part of the Thomas company to permit them to do so would render any allowances unlawful. * * *

Complainant appears to have preferred to do the work itself, and is now asking for compensation therefor. The prayer for reparation in connection with this service should be denied.

Complainant in the instant case further shows that defendant performs spotting services for the American Steel Foundries Company, at Thurlow, Pa., and the Penn Seaboard Steel Corporation, at New Castle, Del. Neither of these companies competes with complainant in the sale of the manufactured products of the respective

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plants, although some of the same raw materials are used. Complainant was not unduly prejudiced by the performance of spotting services at the plants cited in comparison.

Following the case cited and upon this record, we find that failure in the past on the part of defendant to perform the spotting service or to compensate complainant for its performance was not unreasonable or otherwise unlawful.

As bearing on the arrangement to be observed for the future, it is stated on behalf of defendant that it is willing to perform the spotting service for complainant if done under the carrier's exclusive direction and control and without interference on the part of complainant, or with the understanding that the service shall be deemed completed when the railroad encounters interference of any kind resulting from the operations of complainant. Complainant argues that defendants' offer to perform the service is not a bona fide offer because it is limited to the convenience of the carrier. The service required of the defendant is to deliver or receive carload freight at the usual points of loading or unloading unless such points are so located that the request for receipt and delivery at such spots could not, in view of general usage, be regarded as reasonable.

It was stated for complainant upon argument that it was not asking any relief for the future, but that what was sought was compensation for services rendered by complainant in the past and that complainant might not want such services performed in the future.

We find that the failure of defendants to perform the spotting service at complainant's plant or to make complainant an allowance for performing that service did not and does not, under the circumstances disclosed of record, subject complainant to unreasonable, unjustly discriminatory, or unduly prejudicial rates. The complaint will be dismissed.

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No. 11524.

LIMITATIONS OF LIABILITY IN CONNECTION WITH
THE TRANSMISSION OF TELEGRAPH MESSAGES.

UNREPEATED MESSAGE CASE.

No. 8917.

J. L. CULTRA AND MYRTLE CULTRA, PARTNERS, TRADING AS THE CLAY COUNTY PRODUCE COMPANY,

v.

WESTERN UNION TELEGRAPH COMPANY.

Submitted December 10, 1920. Decided May 3, 1921.

Upon investigation, the present rules of telegraph companies limiting their liability for negligence in the transmission or delivery, or for nondelivery, of unrepeatd and repeated interstate messages, constituting integral parts of the respective rates, found unreasonable. Reasonable rules prescribed. Former report in No. 8917, 44 I. C. C., 670.

Rush Taggart, Albert T. Benedict, Francis R. Stark, and R. H. Overbaugh for Western Union Telegraph Company; *William C. Fitts and John L. Farrell* for Postal Telegraph-Cable Company, North American Telegraph Company, and Commercial Pacific Cable Company; and *E. A. Patterson and A. C. Adams* for Continental Telegraph Company.

Luther M. Walter, John S. Burchmore, Joseph H. Beek, T. T. Harkrader, and J. P. Haynes for National Industrial Traffic League; *Henry L. Goemann* for Grain Dealers National Association, Ohio Grain Dealers Association, National Hay Association, American Corn Millers Federation, and National Industrial Traffic League; *Henry S. Robbins* for Board of Trade of Chicago and various associations; *Fayette B. Dow* for National Petroleum Association and Western Petroleum Refiners Association; *Fayette B. Dow and R. S. French* for Joint Council, National League of Commission Merchants of the United States, International Apple Shippers Association, and Western Fruit Jobbers Association of America; *Clare J. Hall* for Ernest L. Wellman, Judson Michigan Bean Company, and Cobbs & Mitchell; and *Stewart Henderson* for Baltimore Chamber of Commerce and Grain Dealers National Association.

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REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

The questions here presented for determination were made the subject of a proposed report by the examiner. Exceptions thereto have been filed by the respondent Western Union Telegraph and Postal Telegraph-Cable companies and by certain of the interveners, and the issues have been briefed and orally argued.

Pursuant to an order entered June 4, 1920, a general investigation has been made of the practices of telegraph companies subject to the interstate commerce act in adjusting claims for damages arising from errors or delays in the transmission or delivery, or from nondelivery, of interstate messages, and the reasonableness of their rules limiting liability on the several classes of messages, dependent upon the rates paid. All common carriers subject to the interstate commerce act engaged in the transmission of telegraph messages have been made respondents. Hearing was held on July 26, 1920, at which time appearances were filed on behalf of the Western Union Telegraph Company, the Postal Telegraph-Cable Company, the North American Telegraph Company, the Continental Telegraph Company, and the Commercial Pacific Cable Company. These companies, including those affiliated with the Postal Telegraph-Cable Company, but excluding the Commercial Pacific Cable Company, which is engaged in the transmission of cable messages only, perform substantially all the commercial telegraph business of the country. At this hearing various individuals and associations appeared for the purpose of expressing their views concerning the subject under investigation and to urge the establishment of more liberal rules and regulations. The record in No. 8917, referred to hereinafter as the *Unrepeated Message Case*, was made available for use in the proceeding, and one report will suffice for both cases.

The propriety of the rules established by the Western Union company to restrict its liability for damages arising from mistakes or delays in the transmission or delivery, or from nondelivery, of interstate messages was considered at length in the former report in the *Unrepeated Message Case*, 44 I. C. C., 670. That proceeding arose from the refusal of the Western Union to satisfy a claim for damages alleged to have resulted from the incorrect transmission of an unrepeated night-letter telegram. We were asked to determine, first, whether by the amended act to regulate commerce we had been invested with jurisdiction over matters of this kind, and, second, whether, if we had such jurisdiction, the rules governing liability were reasonable.

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The rules in question, which are substantially the same as those published by the Postal Telegraph-Cable Company and its affiliated companies, except as hereinafter pointed out, are set out in full in the previous report, but for convenience are restated in the margin.¹ Briefly, they offer the sender his choice of three classes of messages, unrepeatd, repeatd, and valued, with different rates for each class, dependent upon the service to be performed and the liability to be assumed. As a condition attaching to the transmission of a message at the lowest, or unrepeatd, rate it is stipulated that the company shall not be liable for mistakes, delays, or nondelivery beyond the amount received for sending it; and it appears that, unlike the Western Union, the Postal company steadfastly adheres to that limitation. But to protect the sender against possible loss in the event of errors in transmission, the respondents offer the second, or repeatd, class of messages at a rate one and one-half times the rate for the same message if unrepeatd. For this additional rate they agree to assume liability to the extent of 50 times the rate paid, with a maximum liability in the case of the Western Union of \$50. The third class of messages, for the transmission of which the rate charged is the repeatd rate plus a surcharge of one-tenth of one per cent of the valuation, is designed to insure the sender against any loss within the value placed upon the message. To afford protection against extravagant claims for damages on account of errors or delays which a repetition of the message would not have prevented, provision is made by the Western Union for a limitation of liability to \$50, in practice applied both to unrepeatd and repeatd messages, and by the Postal company, in the case of repeatd messages, to 50 times the repeatd rate, which, unless a greater value is declared, is the agreed value of the message. This

¹ ALL MESSAGES TAKEN BY THIS COMPANY ARE SUBJECT TO THE FOLLOWING TERMS:

To guard against mistakes or delays, the sender of a message should order it REPEATD, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeatd message rate is charged in addition. Unless otherwise indicated on its face, THIS IS AN UNREPEATD MESSAGE AND PAID FOR AS SUCH, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any UNREPEATD message, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any REPEATD message, beyond fifty times the sum received for sending the same, *unless specially valued*; nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in cipher or obscure messages.

2. In any event the Company shall not be liable for damages for any mistakes or delays in the transmission or delivery, or for the non-delivery, of this message, whether caused by the negligence of its servants or otherwise, beyond the sum of FIFTY DOLLARS, at which amount this message is hereby valued, unless a greater value is stated in writing hereon at the time the message is offered to the Company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent thereof.

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provision on the part of the Western Union is alleged to be necessary in jurisdictions where the unrepeatd stipulation is held not to avail.

In *Primrose v. Western Union Telegraph*, 154 U. S., 1, decided May 26, 1894, the Supreme Court of the United States upheld the validity of a contract between the sender of a message and the telegraph company by which the latter assumed no liability for mistakes or delays, although arising from the negligence of its employees, beyond the toll charged for transmission unless repetition had been requested and the additional charge therefor paid. It was pointed out that a contract of this nature was not an effort on the part of the company to exempt itself wholly from liability for its negligence, but was a proper and lawful mode of securing a due proportion between the amount for which the company might be responsible and the toll received. Following the ruling announced in that case and applying the principles of the act to regulate commerce, to which act telegraph companies were subjected by the amendment of June 18, 1910, we held in the *Unrepeatd Message Case* that the rules in question, being essentially part of the rates, were subject to our supervision and control, and that the classification of messages into unrepeatd, repeatd, and valued, "with the different rates and liabilities attaching to them, having affirmative recognition in the act itself, * * * when lawfully fixed and offered to the public, * * * are binding upon the defendant and upon all those who avail themselves of its services, until they have been lawfully changed."

The *Unrepeatd Message Case* was decided May 17, 1917. By it common carriers engaged in the transmission of messages were apprised as to what, in our opinion, their practices should be in the settlement of damage claims arising through defaults in service. In order that we might be informed whether the general practice of the Western Union, defendant in the *Unrepeatd Message Case*, was in conformity with its published rules and also to obtain further information relative to the reasonableness of the rules, that proceeding was set down for further hearing. Further hearing was had on February 20, 1918. On August 1, 1918, the President, under powers conferred upon him by Congress, assumed possession and control of the defendant company and appointed the Postmaster General his agent to continue its operation. Control of the property remained in the hands of the government until August 1, 1919, and consideration of the evidence taken at the hearing of February 20, 1918, was held in abeyance during that period. Thereafter, on March 1, 1920, a further hearing was had for the purpose of ascertaining whether changes had been made in the practices of the company since the date of the former hearing, and also to afford an opportunity to parties

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interested to present to us any new facts bearing on the propriety of the rules. At this later hearing petitions in intervention were filed on behalf of various stock, cotton, and grain exchanges and other associations. In the interest of uniformity the general investigation was subsequently instituted.

At the hearing on March 1, 1920, the contention was urged that a telegraph company, as a common carrier, may not lawfully undertake by contract, rule, regulation, or in any manner to exempt itself from full liability for errors or delays in the transmission of messages, and that all such rules restricting liability are void. This question is foreclosed by the decisions of the Supreme Court in the *Primrose Case* and in *Postal Telegraph-Cable Co. v. Warren-Godwin Co.*, 251 U. S., 27. In the latter case, decided December 8, 1919, which involved the extent of the liability of a telegraph company under an unrepeatd interstate message, the court said:

In the first place, as it is apparent on the face of the act of 1910 that it was intended to control telegraph companies by the act to regulate commerce, we think it clear that the act of 1910 was designed to and did subject such companies as to their interstate business to the rule of equality and uniformity of rates which it was manifestly the dominant purpose of the act to regulate commerce to establish, a purpose which would be wholly destroyed if, as held by the court below, the validity of contracts made by telegraph companies as to their interstate commerce business continued to be subjected to the control of divergent and it may be conflicting local laws.

In the second place, as in terms the act empowered telegraph companies to establish reasonable rates, subject to the control which the act to regulate commerce exerted, it follows that the power thus given, limited of course by such control, carried with it the primary authority to provide a rate for unrepeatd telegrams and the right to fix a reasonable limitation of responsibility where such rate was charged, since, as pointed out in the *Primrose case*, the right to contract on such subject was embraced within the grant of the primary rate-making power.

It is shown by the record that the practice of the Western Union in the settlement of damage claims, which is also followed by the Continental Telegraph Company, is not in accord with the rules it has established, but is founded upon a policy in which business considerations predominate. To secure and retain the good will of the public and to encourage a more liberal use of its facilities the Western Union makes it a point to adjust as promptly as possible at least a large percentage of meritorious claims presented to it, regardless of the class of message and of the admonition in the former report that its rules, as part of the rates, must be as strictly observed as the rates themselves. In other words, under its present practice the protection offered the sender under the repeated and valued message rates is voluntarily given for the unrepeatd rate, the contractual limitations of liability being resorted to only when in the

company's opinion the claim is without foundation, can not be settled for less than the cost of litigation, is unusually large, or is open to objection in some other respect.

In justification for departing from the strict and uniform enforcement of its rules it is urged that the courts of many states do not recognize the validity of the partial exemptions from liability, and, therefore, to avoid the expense of litigation claims arising in such jurisdictions are settled by agreement between the parties. This lack of uniformity among the courts in cases involving the restrictions upon the liability of the telegraph companies was referred to in our former report in the *Unrepeated Message Case*. It was there pointed out that one of the necessary consequences of the amended act was to put an end to all such diversity and attach to the respondent's error the same degree of responsibility in all the courts. The practice, however, is to adjust claims contrary to the rules, not only in the jurisdictions which heretofore have declined to sanction their validity but also in jurisdictions where they have been expressly upheld. It is frankly admitted that business considerations and equity dictate its policy.

On the other hand, the policy of the Postal Telegraph-Cable Company and its affiliated companies is the reverse of that of the Western Union. Since the amendment of June 18, 1910, and particularly since the former report in the *Unrepeated Message Case*, the Postal company has consistently declined to pay claims based on interstate messages if the amount involved is in excess of that contemplated in the contract of transmission. The effect upon its business can be readily appreciated. Unquestionably, the more liberal policy of the Western Union, when known, tends to induce patrons of the Postal company to withdraw or curtail their business with that company and transfer it to the Western Union.

It is clear that the policy of the Western Union is contrary to both the spirit and the terms of the interstate commerce act and must therefore be condemned. That the requirement of adherence to established rates and charges, as provided in the act, applies as strictly to telegraph companies as to other common carriers can not be questioned; yet that company makes it a practice, when a default occurs in connection with a message for which it charged the unrepeated rate, to assume a liability for which it holds itself out only at a higher rate. This is a plain departure from its published rules and stands on the same footing as an unlawful rebate. Those who rely upon the published rules are thus placed at a disadvantage, since others, either through ignorance of the rules or with knowledge that they are disregarded, are accorded unauthorized reimbursement for losses which they have sustained through the carrier's negligence.

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The Western Union, while justifying its practice of adjusting claims in excess of its legal liability mainly on the grounds of business policy, equity, and fair dealing, nevertheless opposes a revision of its rules which would legally impose upon it any greater degree of responsibility than it now holds itself out to assume. It urges that its financial condition will not permit the impairment of revenue that would follow if more liberal rules should be established. This view appears to be unfounded. Except for a short period following the amendment to the act in 1910, the practice of adjusting claims to the full extent of the actual loss suffered has been consistently followed, yet the surplus has been increased from \$7,733,692.52 on June 30, 1910, to \$32,518,993.99 on December 31, 1918, as shown by the annual report to the stockholders. Dividends paid in 1910 were at the rate of 3 per cent, and in 1917 and 1918 at 7 per cent. During this period the funded debt was reduced from slightly over \$40,000,000 to approximately \$32,000,000.

In considering the reasonableness of the rule limiting liability in the case of an unrepeatd message to the amount of the toll received for sending it, the evidential effect of the voluntary practices of the Western Union, which handles 75 per cent or more of the telegraph business of the country, can not well be overlooked. Prior to 1910 that rule was never observed, and all claims for damages were referred to and dealt with by the legal department without reference to its limited liability. Following the amendment of 1910 the conclusion was reached that thereafter there could be no latitude in the adjustment of claims, but that settlement would necessarily be made on a standard basis under fixed rules determined by the laws of the different states or the federal laws. Under date of May 8, 1911, authority was granted the general superintendents to settle all claims up to \$500 when damage resulted from a fault in service and there was no valid contract limiting the company's liability. The superintendents were instructed to disregard the unrepeatd-message condition, except in the case of claims arising or based on messages handled solely in New York, Massachusetts, California, or Rhode Island, where the validity of the stipulation was upheld except in the event of gross negligence. In 1913 the policy was altered, and claims were thereafter settled according to the discretion of the superintendents or managers. Since then adherence to the contractual limitations has not been required. It thus appears that the restricted-liability provisions are not resorted to in the case of meritorious claims which are reasonable in amount.

So far as the record shows there has been no substantial change in the Western Union's rule disclaiming responsibility for negligence in the transmission or delivery of unrepeatd messages since it was
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first established, over 50 years ago, notwithstanding that the efficiency of the sending and receiving instruments has been greatly increased and that new appliances have been adopted which reduce the possibility of error to a minimum. Formerly all land-line messages were handled by Morse operation, which required manual transmission in the Morse code and receipt by sound. At the present time substantially one-half of all the messages transmitted by the Western Union, particularly between large cities, are automatically transmitted from the sending office and are received on machines which print the message directly upon the telegram blank. It is asserted by that company that the automatic printing system is the most accurate known for handling messages over long distances, and that the automatic sending instrument affords the most rapid and accurate method of transmission. Apparently, the experience of the Postal company with automatic devices has not been so satisfactory, as that company continues to employ manual transmission. From records prepared by the Postal company it is estimated that the ratio of errors in transmission to the number of messages handled is one to 25,000 or 30,000.

A repeated telegram differs from the ordinary telegram in that it is repeated back at each stage of transmission from point of origin to destination. This class of message is seldom used, an operator testifying that in 17 or 18 years' experience he had transmitted perhaps 200 such messages. Repetition of a message is a certain guard against errors in transmission, but is no protection against delayed delivery. To many patrons of the telegraph service a delay may have as serious consequences as a mistake in transmission, particularly in the case of commercial telegrams between members of boards of trade and exchanges. Rapid transmission and immediate delivery are frequently of such importance, dealers in perishable commodities argue, that they can not afford the delay incident to repetition of their messages. It is improbable, however, that the time required to repeat a message, estimated to be no more than three or four minutes over direct wires, could cause serious inconvenience or loss, except in very rare instances. The charge for an unrepeatd message includes the cost incident to its receipt, transmission, and delivery, and a profit to the company. The repetition is but one additional element of the total service, and its cost, therefore, a relatively small proportion of the original cost, while the charge is 50 per cent higher. This additional amount is compensation for the greater care in handling and the extra liability assumed. So far as the record shows, a repeated message has never failed to accomplish its purpose, except in one instance where there was gross negligence. In that case the default was in delayed delivery. The fact that repetition is ordered

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should put the company on notice that the message is of unusual value, and thus insure the maximum degree of care in its transmission and delivery.

The valued message appears to be of no practical use in the great majority of instances, because of the impossibility of anticipating what default, if any, there may be in the service and thus determining in advance what loss may ensue. So far as a large proportion of the public is concerned this class of messages might be eliminated, as it never has been and probably never will be used to any considerable extent. If a valued message should be sent it would be handled in precisely the same manner as a repeated message; that is, repeated back at each stage of transmission, with extra care exercised in delivery. This class of message, however, is of importance to the carriers in that it places a limit upon unforeseen and unanticipated losses; and the contention pressed upon our notice, that senders can not well anticipate the results of defaults in the service, is at least no less true of the telegraph companies.

The present record amply demonstrates the need for a substantial revision of respondents' rules concerning their liability on interstate messages. All other common carriers subject to the act have been made fully liable for their errors or negligence, notwithstanding attempted limitations by contracts, rules, or otherwise, except in instances where they have been expressly authorized by this Commission to maintain varying rates dependent upon the declared or agreed value of the article transported; and the record herein offers no sound reason why telegraph companies should longer be permitted to avoid liability for their errors or negligence or to limit it to the nominal amounts now provided for in their rules. It has been shown that these rules are not observed by the Western Union, but that, on the contrary, meritorious claims arising in connection with unrepeatd messages are adjusted either to the full extent of the loss suffered or on a basis satisfactory to the claimant. While that company declares that it is ready to abide by its rules as now published, it contends that its present practice is better from all viewpoints. That practice, as hereinbefore stated, contemplates full payment of claims by general superintendents or general managers up to \$500 without submission to the legal department and without reference to the contractual defenses.

The Postal company vigorously opposes any increase in its liability, principally on the ground that its revenues would be insufficient to meet the additional expense. No figures were presented, however, to indicate the probable effect upon the company of assuming liability for defaults in service due to its own negligence, subject to more reasonable limitations, and there is nothing of record

to justify the assumption that its revenues would be seriously impaired. In any event we are not prepared to concede that a public-service corporation may rely upon its financial condition as a justification for refusal to establish reasonable rules and regulations. Certain information relative to revenues, expenses, surplus, dividends, etc., of the various companies affiliated with the Postal company was called for at the hearing, but has not been supplied.

Upon consideration of the record we find that the present rules of the respondents restricting their liability for negligence in the transmission or delivery, or for nondelivery, of unrepeatd and repeated interstate messages are and for the future will be unreasonable; that the maximum liability in the case of a message for the transmission of which the unrepeatd rate is charged should be not less than \$500, and for a message received for transmission at the repeated rate, \$5,000, which limitations we find to be reasonable as parts of the respective rates. Provision should be made for the transmission of valued messages under a liability limited to the value stated in writing by the sender of the message at the time it is offered for transmission upon payment of the repeated rate plus one-tenth of 1 per cent of the stated value in excess of \$5,000.

An order in accordance with the foregoing findings will be entered.

POTTER, *Commissioner*, dissenting:

I can not concur in the view that the liability of the respondents should be increased. We have the right to make regulations designed reasonably to assure the performance by the respondents of their duties. Existing arrangements, I think, are sufficient to that end. As I see it, the Commission by its majority report has departed from the field of regulation and entered the field of corporate management and business policy. If the increased liability benefits the public and brings about an increase of burden to the respondents, that increased burden will be an expense which through increased rates will be passed along to all whom the respondents serve. The result of compliance with our report will be, therefore, to create a sort of insurance relation by which the individual sender of a message will be insured at the expense of senders in general. This might be a desirable arrangement, but whether it should be adopted as a part of the relation with the respondents and among those they serve is a business question rather than a matter of service regulation. To my mind, those who desire insurance should pay for it and should not be accorded it by us at the expense of others. Existing arrangements amply secure those who are willing to pay for their insurance.

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No. 11485.

BIRMINGHAM SOUTHERN RAILROAD COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL.

Submitted January 13, 1921. Decided March 24, 1921.

1. Denial of switching reclaims to Birmingham Southern Railroad on foreign cars handled under division of joint rate held not to be unreasonable or unduly prejudicial.
2. Allowance of switching reclaims to industrial common carriers condemned.
3. Assessment of demurrage under uniform demurrage code against Birmingham Southern Railroad disapproved and substitute prescribed.
4. Principles announced in *Ocasco River Ry.*, 53 I. C. C., 104, overruled in part.

Charles MacVeagh and *Charles S. Belsterling* for complainant.

Claudian B. Northrop for Director General, Southern Railway Company, Alabama Great Southern Railroad Company, Illinois Central Railroad Company, and Mobile & Ohio Railroad Company; *Nelson W. Proctor* for Louisville & Nashville Railroad Company; *M. G. Roberts* for St. Louis-San Francisco Railroad Company; and *Roy Pope* for Atlanta, Birmingham & Atlantic Railway Company.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed and oral argument had.

The Birmingham Southern Railroad Company, hereinafter called the Birmingham Southern, by complaint filed May 19, 1920, alleges that assessment against it of demurrage under the uniform demurrage code by defendant connecting trunk lines for use of foreign cars upon its line, instead of assessment of per diem with reclaim allowances under the per diem code and car service rules of the American Railway Association, hereinafter called the association, subjects complainant and shippers served by it to illegal and unreasonable charges, unjust discrimination, and undue prejudice; and gives undue preference to railroads similar to complainant's road, in violation of sections 1, 2, 3, and 15 of the interstate commerce act, section 10 of the federal control act, and provisions of the transportation act, 1920. The relief asked is the fixing of reasonable compensation to be paid by complainant for past and future use of such

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cars, and establishment of reasonable and nonprejudicial charges, rules, and regulations with respect to the use and interchange of cars.

Complainant operates a short railroad in Alabama. The stock of the company is owned by the Tennessee Coal, Iron & Railroad Company, hereinafter called the Tennessee company, a subsidiary of the United States Steel Corporation. In *Joint Rates with Birmingham Southern R. R. Co.*, 32 I. C. C. 110, we found the Birmingham Southern to be a common carrier entitled to participate in joint rates and receive divisions. Since that decision was rendered there have been material changes in complainant's line. In August, 1918, it sold to the Tennessee company its track formerly used to carry coal from that company's mines to its plants, together with the tracks within the plants and the greater part of the equipment used to serve the Tennessee company. From that date all plant service has been rendered by the proprietary company over its own lines with its own equipment, and all of the Birmingham Southern's property has been devoted to common carriage. As a result of this complete severance of plant work, the large traffic in coal and ore formerly transported by complainant for the Tennessee company is now carried by that company's plant equipment.

The Birmingham Southern operates 26 miles of main line, and serves some 45 industries. The bulk of its traffic is carried for the Tennessee company and the American Steel & Wire Company, another subsidiary of the United States Steel Corporation. In the year ended August 1, 1919, it handled for shippers other than these two industries 14,721 cars and 600,000 tons of traffic, constituting 21.11 per cent of the road's total tonnage. During the last four months of 1919 the traffic for nonaffiliated industries increased to 33.12 per cent.

The Birmingham Southern is incorporated as a common carrier with an independent organization. It files tariffs with and makes reports to us and the Alabama Public Service Commission. It participates in joint rates, receiving an arbitrary division of 8½ cents per ton, and performs switching service at a charge of \$2.50 per car, which is ordinarily absorbed by the trunk lines. Through bills of lading are issued and complainant shares in loss-and-damage payments with the trunk lines.

Complainant now owns 93 cars, which are used almost exclusively for local traffic and are not ordinarily interchanged. Foreign cars are used in plant and interplant service of the proprietary company only in case of emergency.

Originally the Birmingham Southern was assessed demurrage by the trunk lines under the uniform demurrage code. In 1915 complainant became a member of the association. The rules of that or-

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ganization provided that members must sign its car service and per diem agreement within 60 days.

Rule 5 of the per diem code provides that:

An arbitrary amount for each car in switching service may be reclaimed by each individual switching line from the roads for which the service was performed. This amount shall be based upon the average number of days, not to exceed five, actually required in such switching service, to be determined annually by an examination of the records of each individual switching line by the roads directly interested for each local territory.

No reclaim shall be allowed for an intermediate switching movement.

No reclaim shall be allowed under this rule to a non-subscriber.

And "switching service" is defined in the code as:

The movement of a car to be loaded or unloaded, or the movement of a car between railroads, at a charge for the service rendered within designated switching limits, the road performing the service not participating in the freight rate.

Complainant refused to sign unless allowed reclaims on all foreign cars, but the association ruled that no reclaims could be allowed on cars handled under a division of joint rates. The dispute was referred to the association's arbitration committee, which sustained the prior ruling. No further action was taken, complainant still being charged for detention or use of cars under the uniform demurrage code, until October, 1918, when the issue was reopened without results. On April 10, 1919, the car service section of the division of operation of the United States Railroad Administration issued circular CS-59, effective May 1, 1919, providing in appendix C rules governing charges for detention and use of freight cars held by industrial common carriers. Charges for the use and detention of cars were assessed against complainant under this circular up to January 1, 1920, when it was withdrawn except as to appendix C, the part here involved; and since that date, apparently through a misunderstanding on the part of the trunk lines, complainant has been assessed demurrage under the uniform demurrage code.

Complainant has its own demurrage tariffs, and since 1910 has continuously collected demurrage from shippers and receivers of freight on its line for cars delivered by it, but has paid no demurrage or per diem to the Railroad Administration or trunk lines. It tendered per diem without reclaims in July, October, and November of 1919, but the tenders were rejected on the theory that they were not in accord with circular CS-59 and were not made by a subscriber to the per diem rules. The total demurrage so collected by complainant on the Director General's freight cars during federal control was \$22,288 in 1918, \$23,340 in 1919, and \$1,749 in the first two months of 1920.

Prior to the transfer of complainant's plant tracks to the Tennessee company demurrage was assessed by both complainant and trunk
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lines on certain cars retained by the Tennessee company, on account of a dispute as to which carrier made the delivery. This question is now before the courts and is not in issue here. There seems to have been no other double assessment of demurrage against shippers.

Defendants argue that complainant must pay either demurrage or per diem, and that, as it had rejected the latter, the only course open was to assess the former. Complainant denies defendants' authority to collect demurrage from it. While there is nothing inherent in demurrage which precludes assessing it against an industrial common carrier responsible for delay in car movement who has profited by the use of the foreign car, the assessment of demurrage under the uniform code against the Birmingham Southern, without allowance of additional free time to cover the period actually required for service performed by that road, is clearly unreasonable.

The Birmingham Southern does not attack the per diem and car service rules themselves, but contends that it conducts a switching business, though it participates in joint rates and receives divisions; that it performs a switching service irrespective of the method of publishing charges; and, therefore, that the limiting of reclaims to cars handled under rates published in switching tariffs is unreasonable.

Defendants, though admitting that complainant's service is essentially a switching service, contend that it performs a real line haul, since it operates through five stations on an average 8 miles apart; since its line serves three distinct switching districts and includes an 18-mile haul; and since complainant receives a division of the joint rates, carries traffic under through bills of lading, and participates in loss-and-damage payments. It is shown that the Birmingham Southern's average haul under the division of the joint rates is 9.5 miles, its average haul on such business interchanged at Bessemer is 10.7 miles, and on business interchanged at Ensley 4.9 miles.

Complainant's evidence as to undue prejudice was confined to a showing that the Birmingham Belt Railroad Company, hereinafter called the Belt, which is a subscriber to the association's per diem agreement, operates within the same district as complainant, has no cars; has substantially the same mileage as the Birmingham Southern, serves industries which compete with those served by complainant, and receives reclaims on all cars returned within the reclaim period.

Defendants point out that the Belt is owned by the St. Louis-San Francisco Railway Company, and not by a proprietary industry; that it does a strictly switching business and publishes all its charges as switching rates; and that it does not participate in

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any joint rate. They stress the fact that there can be no undue prejudice as complainant has been offered membership in the association under the same rules as are accorded the Belt.

The question of per diem reclaim allowances to industrial common carriers has been before us on several occasions. In *Industrial Railways Case*, 29 I. C. C., 212, 231, we condemned the practice, pointing out how such reclaim arrangements can too readily be made to cover preferences and advantages to the proprietary industries of the industrial lines accorded the reclaims. In the *Second Industrial Railways Case*, 34 I. C. C. 596, 600, the previous finding was incorporated by reference with the comment that further discussion of it was unnecessary. In *Northampton & Bath R. R. Co. Case*, 41 I. C. C. 68, we made a similar finding, and placed the industrial road on a modified demurrage plan. In *Owasco River Ry.*, 53 I. C. C. 104, however, the industrial common carrier was required to "pay to the trunk line per diem in accordance with the rules and at the rates per day generally in effect." The decision does not discuss the reclaims question. Subsequently in *Lake Erie & Fort Wayne R. R. Co.*, 58 I. C. C. 558, 560, and several similar cases we have reserved the question for further consideration, commenting that:

As was pointed out in *Northampton & Bath R. R. Case*, 41 I. C. C. 68, 74, the payment of switching reclaims to industrial lines may result in preferences and advantages to proprietary industries. Undue preference of the shipper who happens to own an industrial road cannot be sanctioned in any guise.

Carriers must observe reasonable rules and practices with respect to car service as defined in the act; however, car interchange is primarily a matter of agreement. The common carrier status of the Birmingham Southern gives no inherent right to per diem or reclaim.

Under a per diem arrangement with reclaims the Birmingham Southern would collect and retain the current progressive or average demurrage rate, pay the smaller per diem rate, and in addition collect any reclaims allowed. Detention of cars by nonproprietary industries would mean a gain in demurrage revenue offset only by the charge for per diem. Instead of the 48 hours' free time accorded other shippers the proprietary industries would in effect have from three to four days' free time, the possession of the car by complainant not being charged against the industry. Even when a car was detained beyond the maximum reclaim period the proprietary industry would merely pay demurrage via its subsidiary corporation back into its own treasury. That industry in effect would be placed on a per diem basis, and freed from the progressive or average demurrage charges.

Under the demurrage plan of the *Northampton & Bath R. R. Co. Case*, *supra*, modified, complainant, though directly responsible to 61 I. C. C.

the trunk lines for demurrage, would sustain no loss for charges for the use or detention of a car when it moved the car without delay, for it would collect demurrage from the industries and would receive one day free time for the movement of the car, but it would suffer a penalty when it consumed in the movement of the car more than the one day allowed for that purpose. Thereby a real incentive for prompt movement of cars would be created, and there would be an actual penalty against both the proprietary and nonproprietary industries as well as the Birmingham Southern. This basis of settlement, however, makes no provision for an average demurrage agreement.

It is apparent that some arrangement other than that now in effect should be made with respect to the detention of cars by the Birmingham Southern and the industries on its line; that such arrangement should make possible the continuance of existing average demurrage agreements; and that it should not take the form of per diem with switching reclaims. We are aware that the conclusions here reached differ from those reached in the *Owasco River Case*, *supra*, which accordingly no longer stand as a basis for future arrangements.

Complainant in proposing a basis for car interchange settlement disclaims any desire to make money from the use of defendant's cars and professes a desire to "break even." It shows a present average detention of foreign cars on its line of 3.2 days per revenue movement but makes no showing as to what portion of that time represents car detention by shippers and receivers of freight on its line.

Upon consideration of the record we find that the denial of per diem reclaims to the Birmingham Southern on foreign cars handled under divisions of joint rates is not shown to have been, or to be, unreasonable or unduly prejudicial. We find further that the assessment of demurrage under the uniform demurrage code against the Birmingham Southern was, is, and for the future will be, unreasonable; and that the Birmingham Southern and the defendant trunk lines connecting with the Birmingham Southern shall establish rules in accordance with the provisions of appendix C of the United States Railroad Administration's circular CS-59 providing for assessment of charges for use and detention of cars except those at home on the tracks of the Birmingham Southern or the industries located thereon against the Birmingham Southern at the contemporaneous demurrage rates on cars delivered loaded and returned empty or delivered empty and returned loaded after the expiration of 72 hours' free time; for the similar assessment of charges for use and detention of cars at the contemporaneous demurrage rates on

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cars delivered loaded and returned loaded after 144 hours' free time; and for the like assessment of charges for use and detention of cars on cars delivered empty and returned empty after 24 hours' free time. Time shall be computed from the first 7 a. m. after actual placement on the interchange track until returned to a recognized interchange track; except that when, through no fault of the delivering line such actual placement can not be made upon the interchange track, time shall be computed from the first 7 a. m. after notice of readiness to deliver such car has been sent or given to the industrial carrier, such notice to contain a statement of point of shipment, car initials and numbers, car contents, consignee, and if transferred in transit the initials and number of the original car. Sundays and legal holidays, but not half holidays, shall be excluded except as hereinafter stated. On cars delivered loaded and returned empty and on cars delivered empty and returned loaded one credit shall be allowed for each car returned within the first 48 hours of free time; after the expiration of 72 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first four days; in no case shall more than one credit be allowed on any one car, and in no case shall more than four credits be applied in cancellation of debits accruing on any one car. On cars delivered loaded and returned loaded two credits shall be allowed for each car returned within the first 96 hours of free time, one credit shall be allowed for each car returned within the first 120 hours' free time; after the expiration of 144 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first eight days; in no case shall more than two credits be allowed accruing on any one car, nor more than eight credits be applied in cancellation of debits accruing on any one car. After a car has accrued the debits named, charges for use and detention of cars at the contemporaneous demurrage rates shall be collected for each succeeding day or fraction of a day, including all subsequent Sundays and legal holidays. At the end of the calendar month the total credits shall be deducted from the total debits and charges for use and detention of cars at the contemporaneous demurrage rates per debit charged for the remainder. If the credits equal or exceed the debits, no charge or payment shall be made on account of such excess credits, nor shall credits in excess of the debits of any one month be considered in computing the average detention for another month. On cars delivered empty and returned empty charges for use and detention of cars at the contemporaneous demurrage rates per car per day or fraction of a day shall be collected, after the expiration of 24 hours' free time.

Under this arrangement shippers located on the Birmingham Southern would be accorded the same treatment in the matter of
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demurrage as those located on the lines of other common carriers and the Birmingham Southern would be enabled to execute average demurrage agreements with industries served by it under circumstances similar to those which control the making of such agreements between other lines and the industries served by them.

There remains for consideration the question of the proper basis for settlement between the Birmingham Southern, Director General, and defendant trunk lines for accrued demurrage charged against the Birmingham Southern but not collected. We find that an adjustment of these charges upon the basis above set forth would be reasonable, and authorize the parties to make settlement in accordance therewith.

An appropriate order will be entered.

ATCHISON, *Commissioner*, dissenting, in part:

The requirement here is that the Birmingham Southern shall compensate its trunk line connections for "the use and detention" of interchanged freight cars on a basis which is virtually the well-known average demurrage agreement, with a slight modification as to the period of free time. Demurrage is primarily intended to compel the release of cars, and applies between carriers and shippers. It is neither the natural nor most suitable basis for the adjustment of compensation for use of equipment interchanged between common carriers. I have previously indicated my view to this effect. *Mount Hood R. R. Co. v. Director General*, 60 I. C. C., 116, 119. The rule in *Owasco River Ry.*, 53 I. C. C., 104, now overruled by the majority, appears to be more logical in its recognition that the parties to the interchange are common carriers and not shipper and carrier, and results in more exact measurement of the compensation which ought to be paid for the use of cars interchanged. With some possible modification in respect to per diem reclaims, it gives as much assurance against favoritism to the owning industry as can be afforded by any rule.

I am authorized to say that COMMISSIONER HALL concurs in this expression.

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INVESTIGATION AND SUSPENSION DOCKET No. 1273.¹
SODA PRODUCTS FROM SALTVILLE, VA.

Submitted February 24, 1921. Decided May 10, 1921.

Proposed rates on soda products, in carloads, from Saltville, Va., to points in central territory found justified. Order of suspension vacated and proceeding discontinued. Complaint of Diamond Alkali Company dismissed.

D. Lynch Younger and *S. S. Bridgers* for Norfolk & Western Railway Company; *L. P. Day*, *F. R. Newman*, and *O. S. Lewis* for all carriers and Director General; *D. P. Connell* for Director General and central freight association lines; *O. S. Lewis* and *F. R. Cross* for Baltimore & Ohio Railroad Company; and *J. H. Grant* for New York, Chicago & St. Louis Railroad Company.

Harry M. Mabey and *Wilbur LaRoe, jr.*, for Mathieson Alkali Works, Incorporated, protestant; and *John S. Burchmore*, *William W. Collin, jr.*, and *Borders, Walter, Burchmore & Collin* for Diamond Alkali Company, complainant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By Division 3:

These two proceedings are related and will be disposed of in one report.

Complainant in No. 11123 is a corporation manufacturing soda ash, caustic soda, bicarbonate of soda, and other soda products at Alkali, Ohio. By complaint filed December 29, 1919, it alleges that the rates on these commodities from Alkali to points in Ohio, Indiana, Illinois, Kentucky, and western Pennsylvania are unreasonable, unjustly discriminatory, and unduly prejudicial in comparison with rates on the same commodities from Saltville, Va., to destinations in those states. The complaint is directed particularly against the relationship between the rates from Alkali and Saltville to common markets. Protestant in the other case is the Mathieson Alkali Works, Incorporated, manufacturing soda products at Saltville.

¹ This report also embraces No. 11123, Diamond Alkali Company v. Director General, as Agent, Akron, Canton & Youngstown Railway Company, et al.

Alkali is on the Fairport, Painesville & Eastern, a short line which connects with the New York Central at Painesville and with the Baltimore & Ohio at Fairport. These junctions are in northeastern Ohio. Saltville is the terminus of a spur of the Norfolk & Western which leaves its Lynchburg-Bristol line at Glade Spring, Va.

At the first hearing in No. 11123, the Norfolk & Western, herein-after called defendant, conceded that the rates on soda products were relatively lower from Saltville than from Alkali and proposed a readjustment which would place them on the same level, distance considered. This contemplated application of the central territory distance scale to the distances from Saltville over its route via Walton, Va., and Kenova, W. Va., and not over the shorter route via Bristol, Va. Saltville is 38 miles northeast of Bristol, and 92 miles southwest of Walton where the Lynchburg-Bristol line connects with defendant's main east-and-west line from Norfolk, Va. The proposal was submitted to protestant and was accepted by it and by complainant as satisfactory.

Schedules were accordingly filed by defendant to become effective January 1, 1921, increasing the rates on soda products from Saltville to points in central territory. Upon protest they were suspended until May 31, 1921, pending this investigation.

By exceptions to the official classification soda ash, caustic soda, and many other soda products, in carloads, are rated 85 per cent of sixth class. Bicarbonate of soda is rated 90 per cent of sixth class. The present rates from Alkali and other points in central territory on soda ash and caustic soda are 85 per cent, and on bicarbonate of soda 90 per cent of the sixth-class rates found reasonable in *C. F. A. Class Scale Case*, 45 I. C. C., 254, as increased under *The Fifteen Per Cent Case*, 45 I. C. C., 303, general order No. 28 of the Director General of Railroads, and *Increased Rates, 1920*, 58 I. C. C., 220.

The rates from Saltville bear no relationship to those in central territory. They were originally established about 1894 in order to assist protestant in disposing of its products in central territory in competition with producers north of the Ohio River. It is said that consumption in the south does not absorb more than 40 per cent of the output of the Saltville plant and that the balance must be marketed in the north. In meeting the competition of manufacturers north of the Ohio River, nearer the consuming points, protestant is under the necessity of equalizing the transportation charges, and claims that its disadvantage in this respect, if increased, will deprive it of many of its most important markets.

The proposed rates from Saltville are constructed by applying substantially central territory scale to the distances over defendant's line through Walton. The traffic moves over this route, although

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under the tariff the route via Bristol, in connection with the Southern and Louisville & Nashville, is available. The Bristol route is materially shorter to many destinations in central territory but requires the services of additional carriers and affords defendant a haul of only 38 miles. Defendant has its maximum haul over the route via Walton.

The present and proposed rates on soda ash and caustic soda from Saltville to representative points in central territory are stated in the following table, together with the distances shown of record over the short route via Bristol and the route of movement via Walton. For convenient comparison the rates applicable from Alkali and other points in central territory for similar distances are also shown. Rates will be stated in cents per 100 pounds.

From Saltville to—	Distances.		Rates.		Central territory scale rates.	
	Via short line.	Via Walton.	Present.	Proposed.	Based on short-line distance.	Based on distance via Walton.
	Miles.	Miles.	Cents.	Cents.	Cents.	Cents.
Louisville, Ky.....	379	589	21	31.5	23.5	36
Cincinnati, Ohio.....	394	475	21	28.5	24	37
Columbus, Ohio.....	406	494	21	28.5	24	38.5
Lima, Ohio.....	497	572	21	28.5	23.5	38.5
Akron, Ohio.....	541	525	21	30	27.5	38
Evansville, Ind.....	541	729	21	32	27.5	39
Cleveland, Ohio.....	547	632	21	30	27.5	39
Legansport, Ind.....	623	672	24.5	31	29	39.5
Saginaw, Mich.....	638	762	21	32.5	30	39
Chicago, Ill.....	679	785	25	33.5	30.5	33.5
East St. Louis, Ill.....	700	837	31	34.5	32	34.5

The evidence shows that the present rates from Saltville are materially lower than rates for similar distances from Alkali. For illustration, a rate of 21 cents applies from Saltville to Kenova, W. Va., 329 miles, and to points as far north as Saginaw, Mich., 762 miles over the route of movement. A 21-cent rate applies from Alkali to points 260 miles distant and a 31.5-cent rate to points 700 miles distant.

Protestant objects particularly to the application of the scale in effect in central territory to the distances from Saltville via Walton. It lays particular stress on the fact that the rates from competing points are predicated on short-line distances and contends that the same basis should be observed if changes are made in the rates from Saltville. The short-line distances to Cincinnati and Louisville, for example, are 394 and 379 miles, respectively, as compared with 475 and 589 miles over the longer route via Walton. The present sixth-class rate from Saltville to those points is 49 cents, 85 per cent of which would produce a rate of 41.5 cents. The proposed rates are materially lower.

Protestant suggested, as one method for determining a nonprejudicial rate relationship between Saltville and other producing points, the application of the distance scale to so-called air-line distances, subject, as maxima from Saltville, to the lowest rates in effect for equal distances from Alkali, Solvay, N. Y., and Detroit, Mich. In arriving at the distances, rail routes were disregarded and cross-country mileages used. Rail rates are not so constructed.

Respondents urge that the proposed rates are no higher, considering the distances over the routes actually traversed, than those for similar distances in the more densely populated, highly cultivated, and lower-rated territory north of the Ohio River. They compare the proposed rates with those which would result from application of the usual percentages of the sixth-class rates from Saltville. For example, 85 per cent of the sixth-class rate to Chicago is 50 cents, while the rate proposed on soda ash and caustic soda is 33.5 cents and on bicarbonate of soda 35 cents. Similarly, 85 per cent of the sixth-class rate to Pittsburgh, Pa., would exceed the proposed rate on soda ash, caustic soda, and bicarbonate of soda by 19 cents. A like comparison between the class and proposed commodity rates from Saltville to Cincinnati and Louisville has already been made.

The suspended schedule names rates to a limited number of destinations, whereas the tariff now in effect contains rates to substantially all points in central territory. Both are subject to rule 77 of Tariff Circular 18-A authorizing the establishment on one day's notice of rates to intermediate points not in excess of those to more distant points. To overcome protestant's objection to rule 77, respondents offered to substitute therefor the usual intermediate rule providing for definite application of the rates to intermediate points, thus in effect extending the rates named to all points to which protestant's products are shipped.

We find that the rates in the schedules under suspension have been justified. As heretofore indicated, the proposed rates will satisfy the complaint in No. 11123.

An order will be entered in Investigation and Suspension Docket No. 1273 vacating our order of suspension and discontinuing that proceeding, and in No. 11123 dismissing the complaint.

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No. 10083.

WHITEWATER LUMBER COMPANY

v.

ALABAMA CENTRAL RAILWAY, DIRECTOR GENERAL,
AS AGENT, ET AL.

Submitted November 15, 1920. Decided May 3, 1921.

Upon rehearing, found that rates on pine lumber, in carloads, from Autaugaville, Ala., to interstate destinations were not and are not unreasonable, but that it was, is, and for the future will be unduly prejudicial to maintain higher rates from Autaugaville than the group rate from Booth, the junction between the Alabama Central Railway and the Mobile & Ohio. Reparation denied. Findings in former report, 53 I. C. C., 278, modified.

John S. Burchmore, Nuel D. Belnap, and Luther M. Walter for complainant.

Wm. F. Thetford, jr., for Alabama Central Railway; and *Russell Houston* for Alabama, Tennessee & Northern Railroad, Alabama & Northwestern Railroad, and Washington & Choctaw Railway.

Claudian B. Northrop and *Chas. J. Rixey, jr.,* for Director General of Railroads and for defendants formerly under federal control.

T. Brady, jr., and *S. S. Ashbaugh* for American Short Line Railroad Association, intervener.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

Exceptions were filed by the complainant and by the defendant Alabama Central Railway to the report proposed by the examiner, and the case was orally argued before us. We have reached a conclusion differing from that proposed by the examiner.

In our former report, 53 I. C. C., 278, we found that the rates on pine lumber in carloads from Autaugaville, Ala., to points in western trunk line, central, and trunk line territories, and in Mississippi, Tennessee, and Kentucky, were unreasonable and unduly prejudicial to the extent that they exceeded the group rates contemporaneously maintained from Booth, Ala., to the same destinations. We prescribed rates from Autaugaville no higher than those from Booth and awarded reparation on shipments made within the statutory period. Upon defendants' petitions the case was reopened and rehearing was had. The American Short Line Railroad Association intervened in defendants' behalf. It avers that our former findings 61 I. C. C.

would, if followed in other cases, destroy the value of many independent short lines or deprive the trunk lines of earnings to which they are lawfully entitled. Rates are stated in cents per 100 pounds and are those which were in effect prior to the general increases of 1920.

The facts are stated in our former report. Complainant offered no evidence upon rehearing, and that for defendants was largely cumulative.

One short line which took an arbitrary over the junction-point rate has severed its connection with the Mobile & Ohio since our former report was issued. There has been no change in the practice of that carrier respecting the application of its group rates.

For defendants it is asserted that we erred in finding the rates attacked unreasonable. The rate of 19 cents from Autaugaville to Cairo, 452 miles, yields about 8.4 mills per ton-mile and 21 cents per car-mile, based on the approximate average weight per car of complainant's shipments, 50,000 pounds. The division of 6 cents accruing to the Alabama Central yields 13.7 cents per ton-mile and \$3.44 per car-mile for its haul of 8.75 miles. The remainder of the rate, 13 cents, accruing to the Mobile & Ohio, yields 5.86 mills per ton-mile and 14.7 cents per car-mile for its haul of 443 miles from Booth to Cairo. On shipments from Autaugaville to Chicago the Mobile & Ohio receives a division of 10.5 cents, equivalent to 4.7 mills per ton-mile and 11.9 cents per car-mile. On shipments from Autaugaville to eastern trunk line territory the Alabama Central receives its local rate of 4 cents from Autaugaville to Booth, yielding 9 cents per ton-mile and \$2.28 per car-mile. It is shown that from January 1, 1914, to September 30, 1918, the division of 6 cents on lumber accruing to the Alabama Central yielded about 70 per cent of its freight revenues and about 57 per cent of its total operating revenues.

Except from Montgomery and near-by points on the Mobile & Ohio, the rate to Cairo from the territory surrounding Autaugaville is 19 cents or higher. The northern boundary line of the 19-cent rate group is irregular and crosses the lines paralleling the Mobile & Ohio west of Montgomery, at points considerably farther north than is Montgomery. The rates from Autaugaville are relatively no higher than those cited by defendants from numerous other points in the south and southeast.

Defendants' principal contention is that no undue prejudice results from the maintenance of higher rates from stations on connecting independent short lines than from a group of points in the same vicinity on main or branch lines of the trunk line carriers reaching the Ohio River and on connecting trunk lines. They cite *Stonega Coke & Coal Co. v. L. & N. R. R. Co.*, 23 I. C. C., 17, *Brush* 61 I. C. C.

Creek Mining & Mfg. Co. v. L. & N. R. R. Co., 39 I. C. C., 441, and various other cases as authority for the view that a carrier is not bound to maintain the same rates from points on a connecting line as from near-by points on its own lines. It is asserted that group rates are applied from points on connecting trunk lines because the lumber originating thereon has more than one outlet and the traffic is highly competitive; and that this situation does not exist in connection with lumber originating on independent short lines. Defendants urge, therefore, that as between these two classes of connecting lines the distinction in rates existing generally throughout the Mississippi Valley and the southeast is justified.

Our former conclusion herein accorded with our decisions in *McGowan-Foshee Lumber Co. v. F. A. & G. R. R. Co.*, 43 I. C. C., 581, 51 I. C. C., 317. Defendants contend, however, that we erred in the *McGowan-Foshee Case* as well as in our former decision herein by following the principle applied in the last two cases cited, which concerned rates on lumber in the southwest and in Pacific coast territory. They assert that conditions in the Mississippi Valley and the southeast are different in that the lumber-producing area comprises several distinct groups made by the individual trunk lines in competition with each other and with transportation by water, and it has been the almost uniform practice to apply higher rates from stations on independent short lines than from the junction points.

Following our recent decisions in *Swift Lumber Co. v. F. & G. R. R. Co.*, 61 I. C. C., 485, and upon the record herein, we find that the rates attacked were not and are not unreasonable, but that they were, are, and for the future will be unduly prejudicial to the extent that they exceeded, exceed, or may exceed the group basis of rates contemporaneously maintained on like traffic from Booth, the junction point with the Alabama Central, from other main and branch line points on the Mobile & Ohio, or from points on its other independent short-line connections within the group boundaries. The proof of damage, if any resulted from the undue prejudice herein found, is insufficient, and reparation will accordingly be denied. An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

I agree with the majority that the rates attacked were not and are not unreasonable. Out of those rates the Alabama Central has been accorded ton-mile earnings from 20 to 30 times greater than those of the Mobile & Ohio on the same shipments. Apparently this was done to keep the short line alive. Under this decision the joint rate, although reasonable, must be brought down to the group rate applied from Booth and other stations named, thereby still further

reducing the slender earnings of the Mobile & Ohio if the Alabama Central is to stay alive, or else the group rate must be raised. For reasons sufficiently indicated in my dissenting expression in *Swift Lumber Co. v. F. & G. R. R. Co.*, 61 I. C. C., 485, I do not concur in the finding here made of undue prejudice, or in the order based thereon.

I am authorized by COMMISSIONER POTTER to say that he concurs in this dissent.

DANIELS, *Commissioner*, dissents.

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No. 11404.
SWIFT & COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted January 11, 1921. Decided May 5, 1921.

Rate on stable manure, in carloads, from Camp Sherman, Ohio, to Parma, Ohio, by an interstate route found unreasonable. Reparation awarded.

R. D. Rynder for complainant.

William A. Eggers for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

By complaint filed April 16, 1920, complainant, a corporation, alleges that the rate of 12.5 cents per 100 pounds charged on numerous carloads of stable manure from Camp Sherman, Ohio, to Parma, Ohio, between May 14 and June 24, 1918, inclusive, was unreasonable to the extent that it exceeded 7.5 cents. Reparation only is asked. Rates are stated in cents per 100 pounds.

The shipments moved from Camp Sherman to Parma over the Baltimore & Ohio through Parkersburg, W. Va. Charges thereon were collected at the applicable sixth-class rate of 12.5 cents, minimum 30,000 pounds. On September 16, 1918, a commodity rate of 12 cents, minimum 40,000 pounds, was established.

In *Swift & Co. v. Director General*, 55 I. C. C., 324, we found that the rate of 15.5 cents charged on similar shipments which moved between June 25 and September 16, 1918, from Camp Sherman to Parma was unreasonable to the extent that it exceeded 12 cents, the subsequently established rate, and awarded reparation to that basis. The shipments here under consideration were not included in that proceeding because of complainant's belief that they had moved intra-state and that our jurisdiction did not extend to such traffic prior to June 25, 1918.

Upon the present record, and following the case cited, we find that the rate assailed was unreasonable to the extent that it exceeded 12 cents per 100 pounds, minimum 40,000 pounds; that the
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shipments were made as described and that complainant paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 10805.

BARNETT OIL & GAS COMPANY

v.

**DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.**

Submitted October 13, 1920. Decided May 5, 1921.

Rates on petroleum and its products, in carloads, from Blue Island, within the switching limits of Chicago, Ill., to near-by destinations in Illinois, Wisconsin, Michigan, and Indiana, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Nicholas W. Hacker and John A. Ronan for complainant.

O. W. Dynes and J. N. Davis for defendants.

John F. Finerty for Director General, as Agent.

C. D. Chamberlin, Ed. P. Byars, E. E. Grant, F. W. Lehman, jr., John D. Reynolds, W. R. Scott, and Clifford Thorne for American Independent Petroleum Association, Independent Oil Men's Association, National Petroleum Association, Texas Petroleum Refiners' Association, and Western Petroleum Refiners' Association, interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, MITCHELLSON, AND EASTMAN.

HALL, Commissioner:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued.

Complainant, a corporation refining crude petroleum at Blue Island, within the switching limits of Chicago, Ill., alleges by complaint filed August 6, 1919, that the rates on petroleum and its products, in carloads, from Blue Island to near-by destinations in Illinois, Wisconsin, Michigan, and Indiana were and are unreasonable to the extent that the uniform increase of 4.5 cents hereinafter referred to represents an increase of more than 25 per cent in the rates in effect June 24, 1918, and were and are unjustly discriminatory and unduly prejudicial. Reparation and just and reasonable rates for

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the future are sought. Our jurisdiction over the intrastate rates assailed, except under circumstances not here presented, is limited to cases falling within the provisions of section 206 (c) of the transportation act, 1920. Rates will be stated in cents per 100 pounds.

Effective June 25, 1918, the rates on petroleum and its products were increased 25 per cent pursuant to general order No. 28 of the Director General of Railroads. Soon thereafter representations were made to the Railroad Administration by many independent operators that the percentage increase disturbed preexisting relationships, and worked disadvantage to them because their shipments moved over long distances, as compared with the Standard Oil companies, handling about two-thirds of the business in the United States, which received crude oil through pipe lines at refineries located in the most important distributing centers, and distributed the products by rail for comparatively short distances, in the main. They asked for a flat increase in lieu of the percentage increase. The proposed substitution was recommended by the Oil Division of the United States Fuel Administration and by the National War Petroleum Service Committee, the latter composed of representatives of producers, refiners, and jobbers, including the Standard Oil interests, and was approved by the Railroad Administration. After investigation and numerous conferences with the interested parties the Railroad Administration determined that a uniform increase of 4.5 cents per 100 pounds would yield approximately the same revenue as the percentage increase. Accordingly, on July 17, 1918, it issued freight rate authority No. 96 directing publication on short notice of tariffs substituting for the 25 per cent increase of June 25, 1918, a uniform increase of 4.5 cents on petroleum and on petroleum products classified fifth class in official, southern, and western classifications, in carloads, the increased rates not to exceed fifth-class rates. It was provided that the increase should apply to continuous through hauls, and, to cover the movement from the midcontinent field to central and trunk line territories, authority was given to establish proportional rates to and from Chicago or the Mississippi River, applying 2.5 cents of the increase to the western factor and 2 cents to the eastern. The tariffs became effective on various dates.

The increase of 4.5 cents amounted to 25 per cent where the rate in effect June 24, 1918, was 18 cents, to a less per cent where the former rate was more, and to a greater per cent where the former rate was less, than 18 cents. Only the latter rates are here assailed.

Complainant contends that the percentage of increase in its rates for short hauls from Blue Island was excessive as compared with the small percentage added to the rates for long hauls from the midcontinent and other producing fields, and that thereby previously

existing rate relationships were disrupted, its traffic unjustly burdened, its geographical advantage destroyed, and an excessive revenue accorded to defendants on short hauls. The rate basis to which this increase was applied is not attacked.

Much evidence was introduced to show that formerly complainant could ship crude oil from the midcontinent field to Chicago, refine it there, and ship the products to near-by destinations on an equality with the midcontinent shippers of refined oil to the same destinations, or with an advantage over them; and that the increase of 4.5 cents changed this equality or advantage to a disadvantage. But the rates assailed are from Chicago, and not to and from Chicago.

A rate increase uniform in amount necessarily tends to preserve rather than disrupt preexisting relationships. This is not true of a percentage increase. The 4.5-cent increase had that effect as to any relationships existing on June 24, 1918, between rates from Chicago and rates from other points. Manifestly any impairment thereby of complainant's equality with or advantage over the midcontinent shipper has been due solely to the fact that the latter pays the additional 4.5 cents on one continuous through movement, whereas complainant's rates to and from its refinery were each increased by that amount, as the movements are separate and distinct shipments of different commodities. Other refineries dependent on rail transportation also have to pay the 4.5-cent increase on crude oil inbound as well as on the refined products outbound.

Complainant's contention as to unjust burden rests mainly upon comparison of the percentages which the 4.5-cent increase bears to the preexisting rates. These run as high as 210 in its rate to Morton Grove, Ill., just outside the Chicago switching limits, and over 40 in rates to numerous other destinations. They are compared with increases of much less than 25 per cent on long-haul traffic. Such comparisons are without great weight, since any uniform specific increase must result in higher percentage increases on short-haul than on long-haul traffic. It is equally true that such an increase, when reasonable for an average haul, will yield more revenue for a short haul and less for a long haul. If that alone will suffice to condemn it, no uniform specific increase can ever be justified.

Complainant pays no higher percentage of increase than is paid by other shippers who use the same rates. It does not show that its rates are unreasonably high as compared with those on the same commodities for similar distances. Defendants show that the rates assailed are generally lower, and in many instances materially lower, than those from refineries at Philadelphia, Pa., Bayonne, N. J., Olean, N. Y., Chester, Pa., Cleveland, Ohio, Kansas City, Mo., Minneapolis and Willmar, Minn., and Superior, Wis., for comparable

distances. They further show that application of fifth-class rates as maxima results in their receiving from 0.5 to 2 cents less than the 4.5-cent increase for hauls of 110 miles and less in central territory, and that to 24 representative near-by points in Illinois and Michigan, including many to which complainant ships, the increased rates are in most instances much less than the corresponding fifth-class rates. Complainant's witness could not name any competitor which has a lower rate for similar hauls under substantially similar circumstances and conditions.

It is testified that complainant's refinery was located at Blue Island because there it would be on a rate equality with refineries located at the seat of production and would have the advantage of being able to make prompt deliveries in the Chicago district and adjacent territory. Complainant contends that this advantage has been destroyed by the inequality in rates resulting from the 4.5-cent increase and that it has been compelled to lease its distributing stations at Waukegan, Antioch, and Gray's Lake, in Illinois, and finally its refinery. It admits that bad management contributed for a time to its business difficulties, but contends that the rate adjustment is primarily responsible.

The interveners are said by their counsel to represent the vast bulk of the independent oil industry of the United States. They appear in support of the 4.5-cent adjustment and call attention to the fact that for the first six months of 1919, when the rates assailed were in effect, complainant's refinery consumed about 800 barrels of crude daily as against 700 during the years 1915, 1916, and 1917. The Standard Oil Company and the Sinclair Oil Company have refineries within the Chicago switching limits at Whiting and East Chicago, Ind., respectively. Their crude oil comes through pipe lines at considerably less cost to them than complainant pays for movement of its crude by rail. On outbound shipments of the products complainant has always had the same rates as these refineries. If an increase of 25 per cent with a maximum of 4.5 cents were substituted, as complainant desires, for the uniform increase of 4.5 cents, it would still have the same rates as these competitors.

The 4.5-cent increase was part of a general readjustment made in an effort to minimize serious disturbances of rate relationships. It met with the approval of producers, refiners, and jobbers generally, and, on the whole, seems to be satisfactory to them. No sufficient reason is shown on this record why it should be condemned as applied to the particular rates in issue.

We find that the rates assailed were not and are not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

No. 11971.

ARIZONA RATES, FARES, AND CHARGES.

IN THE MATTER OF RATES, FARES, AND CHARGES
APPLICABLE BETWEEN POINTS IN THE STATE OF
ARIZONA.

Submitted April 21, 1921. Decided May 3, 1921.

Certain rates, fares, and charges required by state authority to be maintained by respondents within the state of Arizona found to be upon a basis lower than the corresponding interstate rates, fares, and charges authorized by *Increased Rates, 1920*, 58 I. C. C., 220, and to be unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce.

W. J. Galbraith, D. F. Johnson, Amos A. Betts, and Loren Vaughn for state of Arizona and Arizona Corporation Commission.

E. W. Camp, H. C. Booth, A. P. Thom, Fred H. Wood, T. J. Norton, Chalmers, Stahl, Fennemore & Longan, Bullard & Jacobs, J. C. Forest, W. M. Peticolas, Boyle & Pickett, R. K. Minson, and J. R. Bell for respondents.

F. A. Jones for Arizona Freight Payers Association.

F. A. Jones and Roland Johnston for Maricopa County Highway Commission.

Chase Blaine for Arizona Packing Company.

John E. Benton for National Association of Railway and Utilities Commissioners and Arizona Corporation Commission.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This proceeding was instituted upon a petition filed by certain steam carriers operating in the state of Arizona for the purpose of determining whether, as contended by petitioners, an unlawful relationship exists between the intrastate rates, fares, and charges within Arizona on the one hand and interstate rates, fares, and charges on the other. In *Increased Rates, 1920*, 58 I. C. C., 220, hereinafter referred to as *Ex Parte 74*, we authorized an increase in freight rates of 25 per cent upon the lines of carriers subject to our jurisdiction within the territory defined in the report as the mountain-Pacific group of which Arizona is a constituent part. On

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passenger traffic the same increases were authorized within the mountain-Pacific group as throughout the country; namely, 20 per cent in passenger fares and charges, excess-baggage charges, and rates on milk and cream, and a surcharge of 50 per cent upon sleeping and parlor car charges, such surcharge to accrue to the railroads. These increases upon both freight and passenger traffic were established generally on August 26, 1920.

Prior to our decision in Ex Parte 74, the Arizona Eastern Railroad Company; Arizona & New Mexico Railway Company; Arizona & Swansea Railroad Company; Arizona Southern Railroad Company; Atchison, Topeka & Santa Fe Railway Company; El Paso & Southwestern Railroad Company; Grand Canyon Railway Company; Southern Pacific Company; and Morenci Southern Railway Company had filed petitions with the Arizona Corporation Commission seeking the same increases in intrastate rates, fares, and charges within Arizona as should be authorized by us for interstate traffic. These petitions were heard by the Arizona commission on September 16, 1920, at which time the Tucson, Cornelia & Gila Bend Railroad Company was granted leave to intervene and seek the same relief as asked for by the other petitioners. It appears that the carriers declined at this hearing to put in any evidence to justify the increases sought other than copy of our report and orders in Ex Parte 74 and copy of our special permission order which authorized the establishment of the increased rates on short notice. The Arizona commission denied the petitions in their entirety, and the carriers thereupon filed with us the petition upon which the present proceeding was instituted. Our order of investigation makes all steam carriers within the state respondents.

Counsel for the state object to our consideration of the case on the ground that the carriers have not exhausted their remedies in the state tribunals. They say that had the carriers, at the hearing before the state commission, submitted evidence justifying the relief sought their petition would have been granted. A somewhat similar situation was before us in *Arkansas Rates and Fares*, 59 I. C. C., 471, where we said:

The desirability of concerted action of the state and federal regulatory bodies in all matters of transportation in which the power of both is involved has been given recognition in the interstate commerce act. The action of respondents in bringing the matter before us in advance of the filing of an application with the corporation commission and a determination by it renders difficult the coordinated action contemplated by Congress and deprives us of the benefit of such investigation and findings as the state authorities might have made. However, we are here confronted with practical questions for the solution of which Congress has provided a practical course of procedure by means of which substantial justice is assured. Respondents have elected to pursue that course

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and we are not vested with appellate power under which they might be remanded to tribunals of the state.

Various other questions of law raised by the state go to the constitutionality of the interstate commerce act or to the propriety of the interpretation which we have placed upon the act. Our interpretation of the applicable provisions of the act has been discussed in previous reports and need not be repeated here. *Increased Rates, 1920, supra; Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290; *Intrastate Rates within Illinois*, 59 I. C. C., 350, 60 I. C. C., 92. The record in Ex Parte 74 was made a part of the record in this proceeding.

The area of Arizona is 113,956 square miles, the population 333,273, the population per square mile 2.92, and per mile of railroad 140.17. Aside from Nevada and Wyoming it is the least populous of the states comprised in the mountain-Pacific group.

PASSENGER FARES.

The following table shows the present intrastate and interstate bases of fares in Arizona of representative lines parties to this proceeding:

Carrier.	Rate per passenger-mile.	
	Intra-state.	Inter-state.
	<i>Cents.</i>	<i>Cents.</i>
Arizona Eastern (except between Maricopa, Phoenix, and Mesa).....	5	6
Arizona Eastern (between Maricopa, Phoenix, and Mesa).....	4	4.8
Arizona & New Mexico.....	5	6
Arizona & Swanses.....	0	16
Arizona Southern.....	5	15
Atchison, Topeka & Santa Fe (main lines and Ash Fork-Phoenix branch).....	4	4.8
Atchison, Topeka & Santa Fe (Clarkdale, Chlovida, Crown King, and Parker branches).....	5	6
El Paso & Southwestern (main line and Fort Huachuca and Benson branches).....	4	4.8
El Paso & Southwestern (Bisbee, Courtland, and Tombstone branches).....	5	6
Grand Canyon.....	6	7.2
Morenci Southern.....	6	16
Tucson, Cornelia & Gila Bend.....	5	15
Southern Pacific (main line and Benson branch).....	4	4.3
Southern Pacific (Tucson and Calabasas branch).....	5	6

¹ Not increased under Ex Parte 74.

Except for increases resulting from the discontinuance under general order No. 28 of the Director General of Railroads of scrip books there have been no increases in Arizona intrastate passenger fares since 1914. By general order No. 28 all passenger fares then constructed upon a basis lower than 3 cents per mile were increased to a basis of 3 cents per mile. Straight fares in Arizona being uniformly upon a higher basis than 3 cents per mile were not affected by that order. Prior to our report in Ex Parte 74 interstate and intrastate fares in Arizona were generally on the same level.

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As indicated by the table set forth above the present main-line interstate fares in Arizona are constructed on a basis of 4.8 cents per mile while the intrastate main-line fares are constructed on a basis of 4 cents per mile. The 4.8-cent basis prevails on the Southern Pacific from El Paso on the east to Banning, Calif., on the west, and on the Santa Fe from Trinidad, Colo., on the east to Bakersfield and San Bernardino, Calif., on the west. A passenger traveling interstate upon either of these lines within this zone pays 0.8 cent per mile more than the passenger traveling wholly within Arizona, although both may ride in the same train and occupy the same car and perhaps the same seat. Except upon certain short lines which did not increase their fares under Ex Parte 74, the same relative disadvantage exists against interstate passengers traveling in Arizona upon any of the respondent lines. Intrastate fares and charges in New Mexico and California have been increased with the permission of the railroad commissions of those states in the same percentages as have interstate fares and charges. In *Utah Rates, Fares, and Charges*, 60 I. C. C., 388, and *Nevada Rates, Fares, and Charges*, 60 I. C. C., 623, intrastate fares and charges in Utah and Nevada were found to bear an unlawful relationship to the interstate fares and charges which the respondents were required to remove by making increases in the intrastate fares and charges corresponding to those made in their interstate fares and charges.

Respondents estimate that upon the normal intrastate passenger traffic of Arizona they are losing not less than \$450,000 per annum by their failure to secure from the state authorities permission to make the same increases intrastate as we authorized interstate. They show that interstate fares are being defeated and interstate revenues depleted by passengers purchasing tickets to and from stations at or near the state line. By this device the interstate passenger secures a lower fare for transportation within the state on a link of an interstate journey than he would if he paid the through interstate fare. Witnesses for respondents testified to instances where interstate fares had been defeated in this manner. The evidence in this proceeding tends to show increased prevalence of the practice as knowledge of its availability is disseminated among the public.

The average haul per passenger on interstate traffic in Arizona considerably exceeds that on intrastate traffic; and it is the contention of respondents that it costs more per passenger per mile for short distances than for long distances.

Prior to June 25, 1918, two kinds of scrip books were sold in Arizona. One for \$90 at the rate of 2.5 cents per mile was good interstate or intrastate. The other for \$40 at the rate of 3 cents per 61 I. C. C.

mile was usable only upon intrastate journeys. The state contends that the discontinuance of the scrip books resulted in material increases in intrastate fares. It appears that practically all of the scrip-book travel was upon the lines of the Santa Fe, Southern Pacific, Arizona Eastern, and El Paso & Southwestern. Figures submitted for the first three of these lines show that for the year 1917 the scrip books used amounted to 15 per cent, 10.15 per cent, and 9.07 per cent, respectively, of the total Arizona intrastate passenger business of those lines. Figures for the El Paso & Southwestern have not been submitted. Comparatively few \$40 books were sold. Using the \$90 book and the year 1917 as a basis for computation the discontinuance of the scrip books resulted in a gross increase in intrastate passenger revenues in Arizona of about 6 per cent.

The Arizona commission contends that interstate fares to, from, and through that state are unreasonably high, and in support thereof submits comparisons of certain of these fares with interstate fares in other sections. These comparisons have little probative value, as they are unaccompanied by the necessary showing of similarity of transportation conditions. The Arizona commission also submits comparisons of passenger-mile revenues within Arizona with passenger-mile revenues as a whole upon certain of the larger respondent lines, and argues that the average within Arizona being higher than for the systems as a whole, the present intrastate fares are sufficiently high. The evidence is not persuasive, as the averages for the systems as a whole include fares in sections where, owing to more favorable transportation conditions, fares lower than those effective in Arizona are in force.

What has been said with reference to passenger fares applies with equal force to excess-baggage charges and to the surcharge on occupants of parlor and sleeping cars. Excess-baggage charges are based on a fixed percentage of the passenger fare; consequently changes in the fares automatically result in changes in the excess-baggage charges.

The record does not warrant a finding with regard to the relationship of intrastate and interstate commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, or club-car charges. The movement of milk and cream in passenger trains within the state is insignificant and the carriers seek no relief with regard thereto.

FREIGHT.

The present intrastate class rates and many intrastate commodity rates and charges in Arizona represent rates or charges prescribed or approved by the state commission plus the increases authorized

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by general order No. 28. On March 28, 1913, the Arizona commission entered an order prescribing a scale of maximum intrastate class rates. This order required the cancellation of all intrastate class rates that were higher than the prescribed scale but required continued maintenance of any class rates that were lower than the scale. This latter requirement materially affected the fifth-class and class-A rates, a large percentage of which were lower than the scale. In establishing new rates following the issuance of the state commission's order the same rates were generally established for interstate single-line hauls in Arizona as those required by the state commission for intrastate single-line hauls, except that where the existing interstate rates were lower than the scale they were raised to the scale. On joint-line business combination rates apply on interstate commerce, made on the flat scale to and from junction points, but varying arbitraries depending upon the number of lines embraced in the joint haul were added on intrastate traffic transported more than 100 miles, subject, however, to the condition that the through rate so made must not exceed the sum of the local rates to and from the respective junction points of the lines transporting the traffic. For joint hauls of less than 100 miles combination rates were applied with no added arbitraries. The minimum scale provided by general order No. 28 brought the intrastate and interstate rates more closely together and at the time of the issuance of our report in Ex Parte 74 intrastate class rates in Arizona, generally speaking, were not higher than the interstate class rates in that state. In some instances they were lower. A witness for the state admitted that class rates in Arizona for the short hauls were low.

The following table compiled from an exhibit introduced by a witness for the state contrasts present and proposed class rates in Arizona with present intrastate class rates in New Mexico. Rates are stated by classes in cents per 100 pounds.

	1	2	3	4	5	A	B	C	D	E
25 miles.										
Arizona:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Present	22.5	21.5	19	19	17.5	17.5	14	12.5	11.5	10
Increased 25 per cent	28	27	24	24	22	22	17.5	15.5	14.5	12.5
New Mexico	42.5	36.5	30	25	21.5	21.5	17.5	14.5	12.5	11.5
50 miles.										
Arizona:										
Present	39	36.5	32.5	30	25	25	21.5	17.5	15	11.5
Increased 25 per cent	49	45.5	40.5	37.5	31.5	31.5	27	22	19	14.5
New Mexico	59.5	50	42.5	36.5	30	31.5	24	20.5	17.5	15.5
75 miles.										
Arizona:										
Present	60	54	47.5	41.5	36.5	36.5	25	20	17.5	14
Increased 25 per cent	75	67.5	59.5	52	45.5	45.5	31.5	25	22	17.5
New Mexico	75	64.5	53	45.5	37.5	39.5	30	27	24	19

The exhibit from which the above table was compiled also makes comparisons of the Arizona intrastate class rates with interstate class rates in other sections of the country. Some of these rates are lower and some higher than the Arizona intrastate rates. In no case, however, has similarity of transportation conditions been shown, and many of the rates apply in territory of much greater traffic density than exists in Arizona and others are water-compelled rates. Many of the state's comparisons of commodity rates are subject to the same criticism.

The failure of the state commission to permit increases in intrastate rates in Arizona has disrupted the relationship that existed between the intrastate and interstate rates prior to Ex Parte 74. For example, the first-class rates from Deming, N. Mex., and Tucson, Ariz., to Globe, Ariz., on August 25, 1920, were \$1.55 and \$1.575, respectively, a difference in favor of Deming of 2.5 cents. The rate from Deming has been increased to \$1.94, whereas no increase has been made in the rate from Tucson, which now has an advantage of 36.5 cents.

From Los Angeles, Calif., to Yuma, Ariz., the first-class rate on August 25, 1920, was \$1.25 and the intrastate rate from Phoenix to Yuma \$1.375. The Los Angeles rate has been increased to \$1.565, but no increase has been made from Phoenix. These examples could be multiplied almost indefinitely. The state has directed our attention to the fact that if certain of the intrastate rates were increased 25 per cent they would be higher for corresponding distances than certain interstate rates between points within and points without the state. It argues from this that to increase the intrastate rates would result in discrimination against intrastate traffic. This contention takes into consideration but one element of rate making, namely, distance. Other important factors which should be considered, such as density of traffic, operating conditions, etc., are ignored. For illustration the state commission cites in support of its contention rates from Los Angeles and Tucson to Yuma. The first-class rates on August 25 were \$1.25 from Los Angeles and \$1.515 from Tucson. The Los Angeles rate has been increased to \$1.565 and the intrastate rate if increased 25 per cent would be \$1.895. Yuma is equidistant between Los Angeles and Tucson, but the haul from Los Angeles is through a section of much greater traffic density than exists in Arizona. The average intrastate haul of freight in Arizona is materially less than the average interstate haul in that state.

Having the intrastate rates on a level lower than the interstate rates affords shippers an opportunity to defeat the through interstate rates from and to points in Arizona by consigning their ship-

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ments to an intermediate point in the state, there taking physical possession and reshipping under new bills of lading. In this way the lower intrastate rate may be secured for a portion of what would otherwise be a through interstate haul.

The present rate adjustment gives to jobbing points within the state an advantage over jobbing points outside the state. Tucson, an important jobbing point, is in competition with Los Angeles, El Paso, and Deming. The jobber at Tucson can ship in to that point at the interstate rates and out to local points in the state at the intrastate rates thereby securing a relatively lower through rate than is enjoyed by jobbers located at Los Angeles, El Paso, or Deming who ship through to the local points in interstate commerce.

Lumber is shipped from Williams, Flagstaff, and Cliffs, Ariz., in competition with lumber brought by water to San Pedro, Calif., and there reshipped by rail to points in Arizona. In *Saginaw & Manistee Lumber Co. v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 119, Arizona then being a territory, we prescribed maximum rates from northern Arizona producing points to consuming points in the territory. After Arizona became a state, its corporation commission ordered reductions in the rates which we had prescribed. In *McCormick & Co. v. S. P. Co.*, 37 I. C. C., 234, and 49 I. C. C., 324, we considered the relationship between lumber rates from northern Arizona and San Pedro to Arizona points but no order was entered. The following table shows the relationship of these lumber rates on August 25, 1920, and at the present time:

To—	Distances.		Rates Aug. 25, 1920.			Present rates.		
	From San Pedro.	From Williams.	From San Pedro.	From Williams.	Difference.	From San Pedro.	From Williams.	Difference.
	Miles.	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Yuma.....	275	416	36	32.5	3.5	45	32.5	12.5
Tucson.....	527	337	40	29.5	10.5	50	29.5	20.5
Phoenix.....	476	216	45	22.5	22.5	56.5	22.5	34
Globe.....	765	576	55	35.5	19.5	69	35.5	33.5
Douglas.....	653	464	45	33.5	11.5	59.5	33.5	26

There are flour mills at Tucson, Mesa, Phoenix, and Tempe, Ariz. These mills sell in Arizona in competition with Kansas mills. Mills at Los Angeles and Colton, Calif., also ship into Arizona. The basic rates from Kansas to Arizona were prescribed by us in *Arizona Corporation Commission v. A. & N. M. Ry. Co.*, 29 I. C. C., 424, and the intrastate rates were prescribed by the Arizona commission. The table following will show the relationship between rates from Kansas and from Phoenix on August 25, 1920, and at the present time.

To—	Rates Aug. 25, 1920.			Present rates.		
	From Kansas points.	From Phoenix.	Difference.	From Kansas points.	From Phoenix.	Difference.
Douglas.....	\$0.71	\$0.46	\$0.25	\$0.945	\$0.46	\$0.485
Globe.....	.94	.52	.42	1.235	.52	.715
Bowie.....	.71	.41	.30	.945	.41	.535

Packing houses at Cactus, Ariz., a point near Phoenix, and at Los Angeles and El Paso compete in the purchase of live stock in Arizona. Live-stock rates from Arizona to Los Angeles were prescribed in *American National Live Stock Asso. v. S. P. Co.*, 26 I. C. C., 37, and 32 I. C. C., 515; and *Same v. Same*, 32 I. C. C., 438. Arizona rates were prescribed by the Arizona commission prior to 1918. Both the interstate and intrastate rates were increased on June 25, 1918, under general order No. 28. Failure to increase the intrastate rates following Ex Parte 74 has materially widened the differences against Los Angeles. A different situation exists as regards El Paso. The present rates to Cactus from points between Cactus and El Paso are relatively higher than to El Paso. For example, from Raso, Ariz., a midway point, the present rate to El Paso is \$55 per car and to Cactus \$71.50 per car. Transportation conditions are not shown to be substantially different, and the record is not sufficient upon which to base a conclusion as to the reasonableness of the rates between points in Arizona and El Paso. To require an increase in these rates between points in Arizona would result in unjust discrimination against intrastate traffic. The record does not warrant a finding of unjust discrimination or undue prejudice with respect to intrastate rates on live stock.

The mining and smelting of copper ore constitute the largest industry of Arizona, and these interests seriously contend that the condition of the industry is such as not to warrant an increase in ore and flux rates. Our attention is especially directed to ore rates from Bisbee, Ariz., to Douglas, Ariz., and from Ray, Ariz., to Hayden, Ariz. At Bisbee the cars of ore are concentrated from the different shafts at Don Luis, Ariz., an average distance of 3 miles. The ore is then hauled by the El Paso & Southwestern Railroad in train lots of 70 cars to Douglas, a distance of 27 miles. The average load of the cars is 54 tons, the rate 30 cents per ton, and the car-mile earnings 51 cents. From Ray to Hayden the movement is over the Ray & Gila Valley to Ray Junction, thence over the Arizona Eastern to Hayden Junction, where the cars are weighed and delivered over a branch line to the smelter at Hayden. The total haul is 21 miles; the rate 25 cents per ton, and the car-mile earnings 74 cents. The

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ore is handled in train lots of 34 cars, and the average weight per car is 62 tons. The rate of 25 cents is the same as the prewar rate. The intrastate ore and flux rates to Douglas were before us during federal control in *Calumet & Arizona Mining Co. v. Director General*, 57 I. C. C., 382, and we there found that the rates were not unreasonable or otherwise unlawful. It is stated that many of the smaller smelters have shut down, and that the larger smelters are operating only sufficiently to maintain working organizations. It appears, however, that this condition is not due in any substantial degree to transportation costs.

In *Nevada Rates, Fares, and Charges*, 60 I. C. C., 623, and in *Utah Rates, Fares, and Charges*, 60 I. C. C., 388, we did not find that the rates on ore between points in those states were unjustly discriminatory or unduly prejudicial. There is a comparatively small movement, if any, of ore or flux in interstate commerce into or out of the state of Arizona. The record does not warrant a finding of unjust discrimination or undue prejudice with respect to intrastate rates on ore or flux.

The highway commission of the county of Maricopa, Ariz., has an elaborate road-building program and secures sand, gravel, and crushed rock for construction purposes at Tempe. At the time estimates of the costs of the proposed highways were being made, the highway commission took up with the United States Railroad Administration the matter of establishing special rates from Tempe for this material, and the Railroad Administration, it is testified, promised to establish a rate of 50 cents per ton to Phoenix and various other points with rates grading higher to farther distant points, and further agreed that these rates would be subject to a deduction of 10 cents per ton on account of the material being used for county purposes. It appears, however, that the actual movement did not commence until after the carriers had been returned to private control, and that while the promised rates were established the carriers have refused to allow the 10-cent deduction. The highway commission opposes any increase in the present rates. It states that contracts have been let conditioned on the reduced rates promised by the Railroad Administration; that the failure to make the 10-cent per ton deduction has resulted in materially increasing the contemplated cost of the highways and that any further increases will seriously burden the county.

The average haul from Tempe is 18 miles and the present rate of 50 cents, based on an average loading of 80,000 pounds, produces car-mile revenue of \$1.11. Comparison is made by the county authorities of the rate of 50 cents with the rate of 25 cents on ore from Ray

to Hayden, hereinbefore referred to. Respondents explain, however, that the transportation conditions surrounding the movement of the ore are much more favorable than those surrounding the movement of the sand, gravel, and rock. They state that there is a steady movement of the ore averaging from 35,000 to 40,000 tons a day; that there has been an increasing movement for many years; that it is expected that the movement will continue for many years more; and that the ore loads on the average heavier per car and train. Respondents further state that at the time the negotiations were entered into for the establishment of the rates on sand, gravel, and rock the highway commission represented that the movement would be in train lots of 30 cars, but that the actual movement had not exceeded 15 to 18 cars per train. It appears that, based on the representations as to the expected movement, special equipment for handling the material was procured by the carriers.

So far as the evidence shows there is no movement of sand, gravel, and crushed rock in interstate commerce into or out of the state of Arizona. The record does not warrant a finding of unjust discrimination or undue prejudice with respect to intrastate rates on sand, gravel, and crushed rock.

Respondents estimate that the annual loss of freight revenue resulting from the refusal of the state commission to grant the increases sought is approximately \$850,000.

Section 15a of the interstate commerce act in specifying the return which the carriers shall receive upon "the aggregate value of their railroad property * * * held for and used in the service of transportation" provides that rates shall be so adjusted as to bring such return under "honest, efficient, and economical management." The state contends that the roads in Arizona are not managed in the efficient manner contemplated by the law. In support of this contention, it is stated that the Arizona Eastern leases the Phoenix & Eastern; that between Phoenix and Mesa the rails of the two lines parallel each other and that a single track with certain spurs would accommodate all the business handled between these two points. Certain parts of the Phoenix & Eastern's rails between Phoenix and Mesa do not seem to be used to any great extent and there is probably some merit in the contention of the state that one line would suffice.

In further support of its contention that the roads are not being efficiently managed the state alleges that the Arizona Eastern is charged full tariff rates on company material transported over the Southern Pacific. There is a close corporate relationship between the Arizona Eastern and the Southern Pacific but the roads are separately managed and operated. It is apparently the view of the

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state that the Southern Pacific should transport the materials used by the Arizona Eastern free or at reduced rates. In our conference ruling 225(b) we said:

Where stock in one carrier company is owned by another carrier company but both maintain separate organizations and report separately to the Commission, they may not lawfully carry property free for each other.

We are of the opinion that the showing by the state is not sufficient to sustain a charge of inefficient management against the carriers in Arizona.

It is also the contention of the state that the book values of certain lines in Arizona, less 8 per cent which it is stated was the formula used by us in arriving at the valuations set forth in Ex Parte 74, is in excess of the actual valuation of these roads. In Ex Parte 74 for the purposes of that case we placed a valuation upon the properties of the carriers in the western group as a whole and did not announce a separate valuation for any particular road or for the roads within any particular state. We do not, therefore, consider it necessary to go into a further discussion of the state's contention with regard to the valuation of the lines which they have selected in this case.

Upon this record we find no conditions in Arizona that are so different from those affecting interstate traffic as to justify the present differences in rates, fares, and charges.

Following the *New York, Illinois, and Wisconsin Cases*, 59 I. C. C., 290; ib. 350; ib. 391, and upon this record, subject to the exceptions above noted in respect to commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, and club-car charges, we are of opinion and find that the increases made by the respondent steam railroads, under Ex Parte 74, relating to passenger fares and excess-baggage charges, and now in effect, result in reasonable passenger fares and excess-baggage charges for interstate transportation, and that the failure of said respondents to increase the standard intrastate fares and excess-baggage charges accordingly within the state of Arizona has resulted and will result in intrastate fares and excess-baggage charges lower than the corresponding interstate fares and excess-baggage charges, in undue prejudice to persons traveling in interstate commerce within the state of Arizona and between points in the state of Arizona and points in other states, in undue preference of and advantage to persons traveling intrastate in Arizona, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice, undue preference and advantage, and unjust discrimination can and should be removed by
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making increases in said intrastate passenger fares and excess-baggage charges which shall correspond with the increases heretofore made by said respondents as aforesaid under Ex Parte 74 and now in effect in their interstate passenger fares and excess-baggage charges within the mountain-Pacific group.

We further find that the surcharges made by said respondent steam railroads, under Ex Parte 74, and now in effect upon passengers in sleeping and parlor cars, result in reasonable charges upon passengers so traveling in interstate commerce, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate commerce within the state of Arizona has resulted and will result in intrastate charges lower than the corresponding interstate charges, in undue prejudice to persons so traveling in interstate commerce within the state of Arizona and between points in the state of Arizona and points in other states, in undue preference of and advantage to persons so traveling intrastate in Arizona, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice, undue preference and advantage, and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore made as aforesaid under Ex Parte 74, and now in effect upon passengers so traveling in interstate commerce.

We further find, subject to the exceptions above noted with respect to rates on live stock, milk and cream, ore, flux, sand, gravel, and crushed rock, that the increases made by the respondent steam railroads relating to freight rates and charges under Ex Parte 74 and now in effect result in reasonable rates and charges for interstate transportation, and that the failure of said respondents to correspondingly increase their rates and charges for intrastate transportation within the state of Arizona has resulted and will result in intrastate rates and charges lower than the corresponding rates and charges maintained on interstate traffic within the state of Arizona, and between points in the state of Arizona and points in other states; in undue preference of shippers of intrastate traffic within the state of Arizona; in undue prejudice to shippers of interstate traffic; and in unjust discrimination against interstate commerce.

We further find that said undue preference, undue advantage and prejudice, and unjust discrimination can and should be removed by making increases in said intrastate rates and charges as in effect July 29, 1920, which shall correspond with the increases heretofore made by said respondents aforesaid under Ex Parte 74 and now in effect in their interstate rates and charges.

We further find that, whether the aforesaid passenger fares, excess-baggage charges, surcharges, or freight rates and charges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

The above findings, abundantly supported by the record, are without prejudice to the right of the authorities of the state of Arizona or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate rates, fares, or charges on the ground that the latter are not related to the interstate rates, fares, or charges in such a way as to contravene the provisions of the interstate commerce act.

Our findings must not be construed as requiring any common carrier to establish, put in force, or maintain any rate, fare, or charge for the transportation of passengers or property in intrastate commerce which is greater than its corresponding rate, fare, or charge applicable to the transportation of passengers or property in interstate commerce from, to, or at the same points in effect on the date of our order herein, or greater than its corresponding rate, fare, or charge contemporaneously in effect and applicable to the transportation of passengers or property in interstate commerce.

An appropriate order will be entered.

HALL, *Commissioner*, concurring:

I am in accord with the foregoing report except in the findings as to live stock and ore. In rates on live stock there may be no undue prejudice to El Paso as compared with Cactus, the stockyard and packing point near Phoenix, but that such prejudice to Los Angeles exists to the undue advantage of Cactus seems to be indicated if not established by the record and the report. Any doubts about these rates should be resolved by further hearing. So also as to rates on ore. I think here, as in *Utah Rates, Fares, and Charges*, 60 I. C. C., 388, that further hearing should be had to develop more fully the facts.

EASTMAN, *Commissioner*, dissents.

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INVESTIGATION AND SUSPENSION DOCKET No. 1282.

INCREASED ESTIMATED CONTAINER AND CARLOAD-MINIMUM WEIGHTS ON KALE, LETTUCE, AND SPINACH FROM SOUTHERN POINTS.

Submitted April 1, 1921. Decided May 14, 1921.

Increase proposed in tariffs of American Railway Express Company in estimated weights on kale, lettuce, and spinach in bushel containers and in barrels, and increased carload-minimum weights on same, found not justified. Suspended schedules ordered canceled.

A. M. Hartung for American Railway Express Company, respondent.

M. H. Crockett, C. W. Barker, and G. B. Meserve for protestants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

AITCHISON, Commissioner:

By schedules filed to become effective January 18, 1921, and on subsequent dates, respondent American Railway Express Company proposes to increase, on shipments by express, the estimated weights on spinach and kale shipped in baskets and hampers, and on spinach in barrels, and also the carload-minimum weights on spinach, kale, and lettuce, from points in southern and western states to northern and eastern territory. Upon protest of growers of spinach in Texas the schedules were suspended until May 18, 1921, and subsequently until June 17, 1921.

Spinach has been grown in Texas for 15 years or more and is shipped, principally by express, to points in the north and east. During the shipping season of 1919-1920 over 700 carloads moved by express from Texas producing points. The movement begins in December and continues until the following May. During the early years of the industry shipments were made in less than carloads, usually in barrel containers holding 4 bushels, which were billed at an estimated weight of 80 pounds. Later, carload quantities were offered and in place of barrel containers, 1-bushel baskets or hampers came into use. A billing weight of 20 pounds was then established on 1-bushel containers based on the 80-pound billing weight of the 4-bushel barrels. These weights included the weight of the ice used for preservation. Spinach is almost invariably shipped in contact with ice in the containers.

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The present billing weight of the 1-bushel basket of spinach, dry or with ice, is 20 pounds. It is proposed to increase this weight to 25 pounds if ice is used and to 22 pounds if without ice. The present billing weight of a 3-bushel barrel is 60 pounds, a 4-bushel barrel 80 pounds, and a 4.5-bushel barrel 90 pounds. The increased weights proposed are, respectively, 95 pounds, 125 pounds, and 140 pounds with ice, and 83 pounds, 110 pounds, and 125 pounds without ice. The carload-minimum weight is 17,500 pounds, predicated on 875 baskets at 20 pounds each. The proposed minimum is 20,000 pounds, the same as applies on cantaloupes, melons, and vegetables, in straight or mixed carloads. The proposed weights on spinach would apply also on kale. The billing weight of shipments of lettuce in bushel baskets or hampers is 20 pounds, and no change therein is proposed. The actual weight approximates 25 pounds. The proposed carload-minimum weight is 20,000 pounds, an increase of 2,500 pounds. Apparently no kale and but little lettuce moves from Texas to northern and eastern points, and spinach is therefore the commodity affected.

For many years spinach was shipped both by freight and by express at an estimated weight of 20 pounds per bushel basket or hamper. In 1919 a question arose as to the propriety of this weight, and a committee, consisting of a representative of the railroads and of the express company, was appointed by the Director General of Railroads with instructions to ascertain the actual weight. This committee found after numerous tests and conferences with growers and shippers that the gross weight of a bushel basket of spinach with ice varied from 32 to 40 pounds. The weight of the 4-bushel barrel was found to average 200 pounds. The committee rendered its report in February, 1920, and on February 28, 1920, the Director General canceled the provision for estimated weights on spinach shipped by freight and adopted a rule that the charges would thereafter be assessed on actual weights or weights determined by the Western Weighing and Inspection Bureau. The average weight as found by that bureau was 33 pounds, and this corresponds with the general showing of the record. The record shows that the average weight without ice is 22 pounds. There is some evidence to the effect that the average gross weight of the 1-bushel container and contents varies at different loading points and is frequently less than 33 pounds. It is conceded that 33 pounds is the average weight at Austin, Tex. Apparently this variation is due to the condition of the spinach at time of shipment and the necessity or lack of necessity of immersing it in water prior to loading.

The failure of respondent to increase the billing weights in conformity with the action taken by the railroads led to protests by the

latter against the relation which the charges on carload shipments by express bore to the charges on similar shipments by freight. The freight rate from Austin, Tex., to New York, N. Y., taking those points as representative, is \$1.785 per 100 pounds as compared with the express rate of \$2.55, but because of the billing weight on shipments by express the charge on a normal carload of 875 baskets is lower than it is on the same number of baskets shipped by freight. Based on a billing weight of 33 pounds the freight charge, exclusive of refrigeration, on a carload of 875 baskets, exceeds the express charges by \$69.17. Under the proposed billing weight the freight charge would be lower than the express by \$42.39.

Respondent's general tariff rule, applicable in the absence of specific provision, provides an allowance for the weight of ice placed in packages for the preservation of food products amounting to 25 per cent from the gross weight during the months from March to November, inclusive, and 15 per cent from December to February, inclusive. The proposed billing weight of the 1-bushel container is the weight determined by a deduction of 25 per cent from the average gross weight. An allowance of 25 per cent from the gross weight of the 4-bushel barrel would result in a billing weight higher than that proposed.

Respondent contends that the proposed increase in the carload-minimum weight on spinach is necessary in order to maintain maximum loading. It points out that the proposed minimum of 20,000 pounds will permit the loading of 800 baskets instead of 875 as at present. The smallest number of baskets shipped by express during the present season by one of the protestants, as shown in an exhibit of record, is 870 and the largest 1,083. Lettuce and spinach have always been carried in the express tariffs at the same carload-minimum weight and the proposed increase on the former is for the purpose of maintaining the parity. Apparently there is no objection on the part of the growers to an increase in the carload-minimum weight on lettuce. As stated, kale does not move from Texas and no one appeared at the hearing to protest against the increased billing and carload-minimum weights on that commodity.

Protestants concede that the actual gross weights of spinach in baskets, hampers, and barrels are materially in excess of the proposed estimated weights. They contend, however, that if those weights are made effective the growing of spinach must be discontinued, as the transportation charges by freight and by express have been increased to the point that there is no longer any profit to be made by the growers. General order No. 28 of the Director General of Railroads, *Increased Rates, 1920*, 58 I. C. C., 220, and the increase of about 65 per cent in the billing weight from 20 pounds to 33 pounds on bushel

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containers, have together increased the charges by freight approximately 150 per cent. The rates for shipment by express generally were increased 10 per cent in July, 1918, 10 cents per 100 pounds in January, 1919, 12.5 per cent in September, 1920, and 13.5 per cent in October, 1920. The proposed increases in the billing weights of the 1-bushel and 4-bushel containers, the kind generally used, are equivalent to further increases of 25 per cent and more than 56 per cent, respectively.

Spinach grown in Texas can not be sold under present conditions and under the present weights and rates at prices sufficient to cover the cost of packing and transportation and yield a profit to the growers. But it also appears from protestants' testimony that the market price of spinach has been fairly low throughout the country, due to a rather large crop and to the fact that consumers no longer want to pay war prices. An exhibit offered by protestants shows that on two cars loaded with approximately the same number of baskets, shipped last December to St. Louis, Mo., with a week's interval between the shipments, returns on the first car were \$1,357.28 and on the second \$422.92, the variation being due to change in market price. Respondent takes the position that the present depression in prices is the result of the commercial conditions generally prevailing, and does not constitute a valid objection to the maintenance of estimated weights more nearly in conformity with the weights actually carried.

Estimated weights are commonly used for the convenience of both the shipper and the carrier, and they should preferably bear some close relation to the actual weights. While the weights proposed are more nearly in harmony with the actual weights than those now maintained, the latter have been in effect since the inception of the industry and the rates have been made with relation thereto. In a case of this kind where the practical and only effect of the proposed increases in estimated weights would be a substantial increase in transportation charges, the respondent should show not only that the proposed estimated weights are not excessive, but also that the application of the existing rates to such estimated weights will not result in unreasonable transportation charges to the shipper. This has not been done. We accordingly find that the proposed increases have not been justified, and an order will be entered requiring the cancellation of the suspended schedules.

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No. 10174.¹

NATIONAL TUBE COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILROAD COMPANY ET AL.

Submitted April 14, 1920. Decided April 5, 1921.

1. The Mercer Valley Railroad found not to be a common carrier subject to the interstate commerce act and its demurrage tariffs filed with this Commission are without force or effect.
2. The trunk line demurrage tariffs applicable to the detention of cars by industries served by the Mercer Valley Railroad not shown to result in unreasonable or unduly prejudicial charges.
3. The Benwood & Wheeling Connecting Railway and the McKeesport Connecting Railroad found to be common carriers subject to the interstate commerce act. Rules for car interchange between them and their trunk line connections and basis for settlement of accrued charges suggested.

Charles MacVeagh, William W. Corlett, and Charles S. Belsterling
for complainants.

George Stuart Patterson and Clyde Brown for defendants.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

A report proposed by the examiner who heard the evidence was served upon the parties. Exceptions have been filed and argument had. In this proceeding four industries served by three industrial railroads are seeking reparation for demurrage charges assessed by and paid to connecting trunk lines on cars of inbound and outbound interstate traffic which moved during the period from July 29, 1916, to December 28, 1917, both inclusive.

Complainants are the National Tube Company, hereinafter called the tube company, with plants at Benwood, W. Va., and McKeesport, Pa., served respectively by the Benwood & Wheeling Connecting Railway, hereinafter called the Benwood & Wheeling, and the Mc-

¹ This report also embraces No. 10174 (Sub-No. 1), National Tube Company v. Pennsylvania Railroad Company et al.; No. 10174 (Sub-No. 2), Carnegie Steel Company v. Pennsylvania Railroad Company (Western Lines) et al.; No. 10174 (Sub-No. 3), American Sheet & Tin Plate Company v. Pennsylvania Railroad Company et al.; and No. 10174 (Sub-No. 4), American Steel & Wire Company v. Pennsylvania Railroad Company (Western Lines) et al.

Keesport Connecting Railroad, hereinafter called the McKeesport Railroad; the American Sheet & Tin Plate Company, hereinafter called the tin plate company, with a plant at McKeesport served by the McKeesport Railroad; the American Steel & Wire Company, hereinafter called the wire company; and the Carnegie Steel Company, with plants at Farrell, Pa., served by the Mercer Valley Railroad. These four industries and the industrial railroads by which they are respectively served are owned by or in the interest of the United States Steel Corporation. The industrial railroads were originally taken under federal control but released in June, 1918.

Complainants allege that the demurrage charges assessed by the defendant trunk lines, based on detention computed from the time that cars were placed on interchange tracks connecting with the industrial lines until returned thereto, on interstate carload shipments switched between complainants' plants and the rails of the trunk lines by the Benwood & Wheeling, the McKeesport Railroad, or the Mercer Valley, were illegally assessed, unreasonable, unjustly discriminatory, and unduly prejudicial. The measure of these charges is not attacked. Complainants also allege that the industrial lines named are bona fide common carriers subject to the act to regulate commerce, and that the demurrage charges published in their tariffs on file with us were the only demurrage charges legally applicable on the shipments in question. Reparation and an order correcting the alleged violations of the act are prayed.

As the disposition to be made turns upon whether or not these industrial lines were and are common carriers subject to the interstate commerce act we will first consider their status.

BENWOOD & WHEELING CONNECTING RAILWAY.

This road was incorporated January 30, 1900, under the laws of the state of West Virginia, with an authorized capital stock of \$1,000,000, shares of which aggregating \$50,000 in par value were originally issued. In 1917 there was an additional issue of \$250,000. The majority of the outstanding shares of capital stock are owned by the tube company, a subsidiary of United States Steel Corporation. There are no bonds, but \$195,000 is due to the tube company for money advanced, on which no interest is paid.

Prior to November 1, 1917, all tracks operated by the Benwood & Wheeling were leased from the tube company for an annual rental of \$10,000. The only physical property owned by it consisted of seven locomotives and two flat cars. On November 1, 1917, it purchased from the tube company certain of the plant tracks which it had theretofore operated under lease, together with the right of way through the plant property. The property purchased was paid for

with the proceeds of the \$250,000 additional shares of capital stock issued.

The Benwood & Wheeling operates 3.08 miles main track and 3.87 miles yard track and sidings, a total of 6.95 miles. Of this total 2.29 miles of main track and 3.37 miles of yard track and sidings are owned by it, and 0.79 mile of main track and 0.5 mile yard track and sidings under lease from the Baltimore & Ohio Railroad to the tube company are sublet by the latter to the Benwood & Wheeling. It has no team tracks. The equipment owned consists of 10 locomotives, 2 steel flat cars, 13 wooden gondolas, 10 pig-iron dump cars, and 1 test car. It also has 11 unloaders. None of this equipment is interchanged with connecting trunk lines.

Its connections are the Baltimore & Ohio on the east side of the plant property; the Pittsburgh, Cincinnati, Chicago & St. Louis, and the Wheeling Terminal, a switching line, components of the Pennsylvania system, on the west side. The latter lie between the plant property and the Ohio River. Interchange with the Baltimore & Ohio is made in the Boggs Run yard of that carrier, northeast of the plant property. Interchange with the Pittsburgh, Cincinnati, Chicago & St. Louis and the Wheeling Terminal is made on their interchange tracks west of the plant property.

The principal industry served is the tube company. Its plant at Benwood covers an uninclosed area of 80 acres, containing blast furnaces, rolling mills, steel works, tube mills, pipe mills, and other buildings. Within the plant property the tube company maintains and operates an extensive system of standard-gauge tracks as a facility of its manufacturing operations. These tracks are used by the Benwood & Wheeling for the placement of cars for loading and unloading as required by the tube company and for plant and inter-plant switching. The tube company also maintains and operates a narrow-gauge system over which it moves material between the various departments of the plant.

The only other industry served is the Semet-Solvay Company, the plant of which is located on the property of the tube company. It manufactures coke and by-products, supplies the tube company with coke, and with its own motive power performs the necessary mill switching in connection with its manufacturing operations. The record shows that the Semet-Solvay Company is not affiliated with the United States Steel Corporation or any of its subsidiaries, and that upon one occasion when the plant of the tube company was shut down the Benwood & Wheeling continued to operate and served the Semet-Solvay Company at a loss.

The general character of service performed by the Benwood & Wheeling is the switching of cars between the trunk line interchange

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tracks near the tube company's plant and the points of loading and unloading in the plant. It also performs plant and interplant switching for the tube company. The average distance covered by the switching service is about 1 mile. The time and extent of the service of switching inbound material to the tube company, such as ore, coke, and limestone, is largely, if not entirely, dependent upon the requirements at the furnaces.

The trunk lines absorb a part of the charge which the Benwood & Wheeling makes for switching to and from their interchange tracks. It does no passenger, mail, or express business and does not issue bills of lading or make waybills. The connecting trunk lines issue bills of lading for all shipments received by them from this road. It files tariffs and annual reports with us and keeps its accounts under our requirements. It complies with state and federal laws governing common carriers.

For the year ended December 31, 1917, the total traffic handled by it amounted to 2,598,766 tons, of which 1,759,568, or 68 per cent, was interchanged with connecting carriers and 839,198, or 32 per cent, was handled in plant and interplant switching for the tube company. Of the total traffic handled during the above period 99.72 per cent was for the tube company.

It was formerly a party to the per diem agreement and received reclaims. That agreement was canceled as of March 1, 1914. Both before and since that date it assessed and collected demurrage charges and does still. For a number of years it was party to an average agreement with the tube company. Since January 1, 1918, the tube company has been paying to it demurrage charges on what is known as the straight 48-hour basis. Since March 1, 1914, the trunk lines have been assessing demurrage charges against the industry on the same cars. Under the Benwood & Wheeling tariff demurrage begins to run 48 hours after placement of the car at the industry, while under the trunk lines' tariffs demurrage on the same car begins to run 48 hours after actual or constructive delivery to the Benwood & Wheeling.

M'KEESPORT CONNECTING RAILROAD.

This road was incorporated March 20, 1889, under the laws of the state of Pennsylvania, with an authorized capital stock of \$1,000,000, all the shares of which have been issued and, except directors' qualifying shares, are owned by the tube company. It has no funded debt.

On December 31, 1917, it owned and operated a total trackage of 14.19 miles, of which 5.92 miles are main track and 8.27 miles yard track and sidings. All of the tracks owned and operated by it are within the plant inclosure of the tube company at McKeesport. It

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operates four team tracks accessible to the public and over which it is willing to serve anyone desiring team track service. It owns its right of way, part of which was acquired through condemnation proceedings. The equipment consists of 16 locomotives and 181 freight cars. None of its equipment is interchanged with its connections, the Pennsylvania, the Baltimore & Ohio, and the Pittsburgh & Lake Erie. The tracks of these three trunk lines extend along the southern boundary of the tube company's property and the right of way of the Pennsylvania immediately adjoins the property line.

The principal industry served is the tube company. Its plant at McKeesport includes blast furnaces, steel mills, rolling mills, and tube and pipe works. Within the plant inclosure the tube company maintains and operates standard-gauge tracks which are used by the McKeesport Railroad to place cars for loading and unloading, as required by the tube company, and for plant and interplant switching. In addition to the standard-gauge tracks the tube company maintains and operates a narrow-gauge system for the movement of materials between the various departments of the plant.

The plant of the tin plate company, also a subsidiary of the United States Steel Corporation, adjoins the plant of the tube company on the west. The only independent industry on the rails of the McKeesport Railroad and served by it is the Keystone Sand & Supply Company, on the bank of the Monongahela River at the east end of the tube company's property.

The general character of service performed by the McKeesport Railroad is the switching of cars between its points of interchange with the trunk lines and the points of loading and unloading. The average distance covered by this service is about 1 mile, and the movement is entirely within the plant inclosure. Interchange of all traffic, except coke, ore, and limestone, is made in what is known as the south yard, owned by the McKeesport Railroad and located within the plant inclosure of the tube company. Coke, ore, and limestone are delivered to it by the trunk lines on other tracks which it has within the plant inclosure of the tube company. Coal, as a general rule, comes in by the river and is hoisted overhead by an elevating contrivance operated by the tube company.

The interchange service performed for the tin plate company consists of switching the cars between the interchange tracks described and the point of connection with the rails of the McKeesport Terminal Railroad, an incorporated road owned by the tin plate company and operating the plant tracks and equipment of that company under lease. The McKeesport Railroad also does a small amount of interchange switching for the Keystone Sand & Supply Company between its plant and the point of interchange with the trunk lines

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within the plant inclosure of the tube company. The McKeesport Railroad also performs some interline switching service between the trunk lines in connection with the traffic of another plant of the tube company near Versailles, Pa., and of independent shippers. It does no passenger, mail, or express business.

Complainants' witness testified that the McKeesport Railroad had been held to be a common carrier by the courts of Pennsylvania. The trunk lines absorb a part of the charge which the McKeesport Railroad makes for switching to and from other interchange tracks.

A statement of record shows that for the year 1917 the total traffic handled by the McKeesport Railroad amounted to 6,916,030 tons, of which 3,839,705 tons, or 56 per cent, was interchanged with connecting carriers and 3,076,325, or 44 per cent, was handled in plant and interplant switching. Of the total traffic handled during that period 97.13 per cent was for the tube company, 2.66 per cent was for the tin plate company and 0.21 per cent was handled for the Keystone Sand & Supply Company or over the team tracks. For the year 1915 the proportion of the total revenue derived from service performed for the tube company and the tin plate company was 99.24 per cent and from all other service 0.76 per cent.

The McKeesport Railroad was formerly a party to the per diem agreement and received reclaims, but that arrangement was discontinued in 1914. Both before and since that date it has assessed and collected demurrage charges from shippers and consignees. For a number of years it was party to an average agreement with the tube company, but that arrangement was canceled December 31, 1917. Since then the tube company has paid demurrage charges to the McKeesport Railroad on the straight 48-hour basis, and during the same period the trunk lines have also assessed demurrage charges on the same cars. Under the tariff of the McKeesport Railroad demurrage begins to run 48 hours after placement of the car at the industry, and under the trunk lines' tariff 48 hours after actual or constructive delivery of the car to the McKeesport Railroad.

This road files tariffs and annual reports with us and keeps its accounts under our requirements. It complies with state and federal laws governing common carriers.

MERCER VALLEY RAILROAD.

This road was incorporated January 3, 1900, under the laws of the state of Pennsylvania. It has a capital stock of \$275,000, all shares of which were issued and are held for the beneficial interest of the Union Steel Company, a subsidiary of the United States Steel Corporation. It has no funded debt.

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It owns and operates a total of 11.11 miles of track, of which 3.99 miles are main track and 7.12 miles yard track and sidings. The tracks extend entirely around the plants of the Carnegie Steel Company and the wire company, and partly around the plant of the Sharon Coke Company. The right of way is owned by the Mercer Valley. Its equipment consists of nine locomotives, which it owns. It has no cars or team tracks.

The connecting trunk lines are the Pennsylvania (Western Lines), the Erie, and the New York Central. The tracks of the Pennsylvania parallel the property line of the Carnegie Steel Company and the wire company on the east. The Erie and the New York Central reach connections with the Mercer Valley at the boundary of the plant property by means of tracks crossing the Shenango River on the west side of the plant.

The only industries served are the Carnegie Steel Company, the wire company, and the Sharon Coke Company, at plants grouped together at Farrell, all owned by or in the interest of the United States Steel Corporation. As a facility of the manufacturing operations these industries maintain and operate systems of standard-gauge tracks for the movement of materials between the several departments of their plants. The Carnegie Steel Company operates blast furnaces at its plant and also leases and operates the plant of the Sharon Coke Company. These two plants are operated as a unit. The wire company operates separately. The greater portion of the coke manufactured by the Sharon Coke Company is used by the Carnegie Steel Company in its plant at Farrell, but some of it is shipped to other plants of the Carnegie Steel Company at New Castle, Pa., or switched to its plant at Sharon, Pa., a short distance from Farrell. The by-products are shipped to various purchasers all over the country. The property on which these plants are located is not entirely inclosed, but there is a fence extending along the east side of the property between the tracks of the Pennsylvania and the Mercer Valley, and a portion of the Sharon Coke Company's plant is inclosed.

The points of interchange with the connecting trunk lines immediately adjoin the property of the Carnegie Steel Company, the wire company, and the Sharon Coke Company. All outbound traffic is delivered by the Mercer Valley to the trunk lines at these points of interchange, and the Pennsylvania there delivers inbound traffic to the Mercer Valley, but the Erie and the New York Central deliver inbound traffic in the classification yards of the Mercer Valley within the plant, the tracks of the Mercer Valley being used for that purpose.

The general character of service performed by the Mercer Valley is the switching of cars between the points of interchange described and the points of loading and unloading in the plants of the industries served. The various commodities to be consumed by the blast furnace are switched from the interchange tracks to the points of unloading as required by the industry. The inbound coke, ore, and limestone must be delivered at specified intervals, and the Mercer Valley must have power available at all times for the switching necessary to keep the furnaces running without interruption.

During the year 1917 the total traffic handled by the Mercer Valley amounted to 4,351,675 tons, of which 3,134,436 tons, or 72.03 per cent, was interchanged with the connecting trunk lines and 1,217,239 tons, or 27.97 per cent, was handled by the Mercer Valley in plant or interplant switching. The entire traffic handled in that year was for the proprietary industries. It does no passenger, mail, or express business.

The trunk lines absorb a part of the charge which the Mercer Valley makes for switching to and from their interchange tracks. It files tariffs and annual reports with us and keeps its accounts under our requirements. It complies with state and federal laws governing common carriers.

It was formerly a party to a per diem agreement, but that agreement was canceled March 1, 1914. Since that date industries served by it have been supplied with cars by the trunk lines on the demurrage basis. Prior to March 1, 1914, it published its own demurrage tariffs and assessed and still assesses demurrage charges against the industries on its line under the uniform demurrage code, the same as are filed by the trunk lines. It also entered into an average agreement with the industries on its line and the industries have regularly paid the amounts due it under that agreement. The demurrage charges assessed by the trunk lines cover the total detention from the time the cars go off the rails of the trunk lines until they are received back, and cover the time they are on the Mercer Valley as well as the time they are in possession of the industry. Demurrage assessed by the trunk lines is on the straight 48-hour basis.

The evidence in support of complainants' allegations of unjust discrimination and undue prejudice was confined to mention of several industries in the same lines of business as complainants, said to be competitors and located in the Pittsburgh, Pa., and Youngstown, Ohio, districts, and the general statement that for such industries the trunk lines spot cars at loading and unloading points and compute detention for the purpose of assessing demurrage from the time a car is placed at the loading or unloading point until it is

taken therefrom. The basis for assessing demurrage by the trunk lines at the plants mentioned is the same as that for which complainants contend, and the discrimination, if any there be, results from the action of the trunk lines in delivering and receiving freight for the competitors at their loading or unloading points while receiving and delivering traffic for complainants at the points of interchange with the industrial railroads. Such discrimination is not in issue here and the record contains no details as to physical or other conditions at the competing plants.

Defendants contend that complainants are "industrial plants performing their own switching service" through the medium of affiliated industrial railroads, and therefore that demurrage should be assessed against them based on detention computed in accordance with the following provision of the National Car Demurrage Rules, as published in the trunk lines' tariffs:

On cars to be delivered on interchange tracks of industrial plants performing their own switching service, time will be computed from the first 7 a. m. following actual or constructive placement on such interchange tracks until return thereto. See rule 4 (Notification) and rules 5 and 6 (Constructive placement). Cars returned loaded will not be recorded released until necessary billing instructions are given.

They introduced evidence to show that they are endeavoring to apply this same rule to all plants on their lines situated similarly to those of the complainants, but that in several instances where, as in this case, the incorporated industrial roads serving particular plants file demurrage tariffs with us, the controlling industries are resisting the assessment of demurrage upon the basis sought to be applied by the trunk lines, and that the disputes upon this point have not been adjudicated.

On brief complainants presented elaborate arguments, and cited in support of their contentions many decisions by us and by the courts, which it is thought unnecessary to discuss in detail.

The Mercer Valley and the industries which it serves are controlled by the United States Steel Corporation. This road, while complying with laws which are applicable to common carriers and formally holding itself out to serve the public by publishing and filing its tariffs with us, obviously is intended to serve the affiliated industries which it does serve, and those only, and has no facilities which are accessible to or available for service of the general public.

Upon this record we find that the Mercer Valley was not at any time, and is not now, a common carrier subject to the interstate commerce act. It follows that its demurrage tariffs on file with us are of no force and effect and that the demurrage tariffs of the trunk lines are applicable. It also follows that the trunk lines should dis-

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continue their practice of absorbing a portion of the Mercer Valley's charges; but this is not to say that it is unlawful for the trunk lines to make a reasonable allowance to the Mercer Valley for performing for them any portion of the service customarily included in the interstate line-haul rates which they do not elect to do for themselves. We further find that demurrage charges resulting from the application of the rule in the trunk lines' tariffs above quoted to the cars detained by complainants' plants served by the Mercer Valley are not shown to have been or to be unreasonable or unduly prejudicial.

The McKeesport Railroad and the Benwood & Wheeling not only hold themselves out as common carriers, but have facilities which are available for use in connection with their service for the public and are used in such service to a limited but appreciable extent. We find that at all times covered by the complaints these roads were and now are common carriers subject to the interstate commerce act, and that, following *Birmingham Southern R. R. Co. v. Director General*, 61 I. C. C., 551, the following arrangement between them and their trunk line connections with respect to the detention of cars on the lines of the former, and demurrage charges thereon, will be reasonable and proper for the future, and also that it affords a reasonable and proper basis for the adjustment of the demurrage charges on past shipments which are here in controversy.

The McKeesport Railroad, the Benwood & Wheeling, and the defendant trunk lines connecting with the McKeesport Railroad and the Benwood & Wheeling, shall establish rules in accordance with the provisions of appendix C of the United States Railroad Administration's circular CS-59 providing for assessment of charges for use and detention of cars, except those at home on the tracks of the McKeesport Railroad and the Benwood & Wheeling or the industries located thereon, against the McKeesport Railroad and the Benwood & Wheeling at the contemporaneous demurrage rates on cars delivered loaded and returned empty, or delivered empty and returned loaded after the expiration of 72 hours' free time; for the similar assessment of charges for use and detention of cars at the contemporaneous demurrage rates on cars delivered loaded and returned loaded after 144 hours' free time; and for the like assessment of charges for use and detention of cars on cars delivered empty and returned empty after 24 hours' free time. Time shall be computed from the first 7 a. m. after actual placement on the interchange track until returned to a recognized interchange track; except that when, through no fault of the delivering line, such actual placement can not be made upon the interchange track, time shall be computed from the first 7 a. m. after notice of readiness to deliver
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such car has been sent or given to the industrial carrier, such notice to contain a statement of point of shipment, car initials and numbers, car contents, consignee, and, if transferred in transit, the initials and number of the original car. Sundays and legal holidays, but not half holidays, shall be excluded except as hereinafter stated. On cars delivered loaded and returned empty and on cars delivered empty and returned loaded one credit shall be allowed for each car returned within the first 48 hours of free time; after the expiration of 72 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first four days; in no case shall more than one credit be allowed on any one car and in no case shall more than four credits be applied in cancellation of debits accruing on any one car. On cars delivered loaded and returned loaded two credits shall be allowed for each car returned within the first 96 hours of free time, one credit shall be allowed for each car returned within the first 120 hours' free time; after the expiration of 144 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first eight days; in no case shall more than two credits be allowed accruing on any one car, nor more than eight credits be applied in cancellation of debits accruing on any one car. After a car has accrued the debits named, charges for use and detention of cars at the contemporaneous demurrage rates shall be collected for each succeeding day or fraction of a day, including all subsequent Sundays and legal holidays. At the end of the calendar month the total credits shall be deducted from the total debits and charges for use and detention of cars at the contemporaneous demurrage rates per debit charged for the remainder. If the credits equal or exceed the debits, no charge or payment shall be made on account of such excess credits, nor shall credits in excess of the debits of any one month be considered in computing the average detention for another month. On cars delivered empty and returned empty, charges for use and detention of cars at the contemporaneous demurrage rates per car per day or fraction of a day shall be collected, after the expiration of 24 hours' free time.

Under this arrangement shippers located on the McKeesport Railroad and the Benwood & Wheeling would be accorded the same treatment in the matter of demurrage as those located on the lines of the common carriers and the McKeesport Railroad and the Benwood & Wheeling would be enabled to execute average demurrage agreements with industries served by them under circumstances similar to those which control the making of such agreements between other lines and the industries served by them.

Reparation is prayed but no order will be entered at this time awarding reparation. The principles herein announced should be applied as soon as possible by all the carriers concerned and the Commission advised when settlement is effected.

McCHORD, *Commissioner*, dissenting:

I am unable to agree with the conclusion reached by the majority with respect to the status of the Benwood & Wheeling Connecting Railway Company.

Three incidents are essential to constitute a railroad company a common carrier. There must be facilities of common carriage available to the public, a holding out on the part of the carrier to use its facilities in serving the public, and actual use of such facilities by the public.

The tracks of the Benwood & Wheeling are located almost entirely within the limits of the plant of the proprietary industry, the National Tube Company, its connections with the trunk lines being adjacent to the plant property. It has no team tracks or stations for use by the public, does no passenger, mail, or express business, does not issue bills of lading or make waybills. During the year ended December 31, 1917, 99.72 per cent of its total traffic was for the tube company. The only other industry served is located on the property of the tube company engaged in manufacturing coke and by-products, the coke being used by the tube company.

The facilities of this carrier are not available to the public. While the theoretical right of the public to use the road's facilities may not seriously be questioned, its tracks are so situated that it would be a vain thing for the public to demand service of it. This switching service is performed almost entirely at the direction of the proprietary industry and the only other service it performs is for a necessary adjunct of the proprietary industry. The service of the Benwood & Wheeling is, therefore, exclusively for the benefit of the two industries mentioned and primarily for the proprietary industry, and there is no bona fide holding out of service to the public. In other words, the Benwood & Wheeling is nothing more or less than a plant facility of the tube company.

COMMISSIONER EASTMAN authorizes me to say that he concurs in this dissent.

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No. 11148.

PRINCE-JOHNSON LIMESTONE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY, ET AL.

Submitted December 20, 1920. Decided May 5, 1921.

Rates on crushed rock, in carloads, from Leeds, Mo., and Rosedale, Kans., to destinations within a radius of 150 miles from Kansas City, Mo., on lines of defendants other than the originating lines, found unreasonable but not unduly prejudicial. Reasonable maximum interstate rates prescribed for the future. Reparation denied.

S. C. Bates for complainant.

Silas H. Strawn, E. T. Miller, Frank H. Towner, Robert N. Nash, Hale Houts, F. H. Moore, J. C. Burnett, L. C. Mahoney, John F. Finerty, and Thomas M. Woodward for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by defendant Director General of Railroads, as Agent, to the report proposed by the examiner.

Complainant, a corporation manufacturing crushed rock at and near Leeds, Mo., and Rosedale, Kans., in the suburbs of Kansas City, Mo., by amended complaint filed January 19, 1920, alleges that the rates on crushed rock, in carloads, from Leeds and Rosedale to destinations within a radius of 150 miles from Kansas City on lines of defendants other than the originating lines are unreasonable to the extent that they exceed the contemporaneous rates on that commodity from Kansas City to the same destinations, and unduly prejudicial compared with defendants' contemporaneous rates on chat from the Joplin, Mo., district to the same destinations. The prayer is for just and reasonable rates for the future and for reparation on all shipments made after the filing of the complaint. Our jurisdiction over intrastate rates, except under circumstances not here present, is limited to cases falling within the provisions of section 206 (c) of the transportation act, 1920. Rates are stated in cents per 100 pounds and are those in effect immediately prior to the general increase of 1920.

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Complainant has two plants about a mile apart at and near Leeds, approximately 5 miles southeast of the union station at Kansas City. Both plants are served by the Kansas City Southern and one of them by the Chicago, Rock Island & Pacific. The Rosedale plant is on the St. Louis-San Francisco about 5 miles southwest of the same union station and 2.7 miles southwest of the Rosedale station of that carrier. All the plants are outside the Kansas City switching limits.

From Rosedale and Leeds to destinations on the lines of the three carriers named the rates are generally the same as or lower than from Kansas City to the same destinations. There are no joint rates to points on connecting lines. The local rate from Rosedale or Leeds to Kansas City is 2 cents and, where class rates are in effect to points beyond Kansas City, is used in combination therewith. Where commodity rates apply beyond Kansas City only 1 cent is added thereto on shipments from Rosedale or Leeds under the applicable combination rule. Complainant says that most of its rates are on the class basis, to which the full 2-cent local is added. From Rosedale the combination rate to Parkville, Mo., 18 miles, is 4 cents and to Clements, Kans., 153 miles, 10 cents. This indicates the range. The average rate is about 6.5 cents for about 75 miles.

Complainant's witnesses testify that the movement from the crushers to railroad connections at Kansas City is ordinarily performed by switching engines and crews, even though in isolated instances a road engine is used, and is therefore essentially a switching movement. Defendants contest this and point out that the hauls into the congested Kansas City terminals approximate 10 miles from Leeds and 6 miles from Rosedale. The rules governing switching absorptions at Kansas City are not uniform. Most of them are limited in various ways, and some of the lines absorb switching charges only on competitive traffic.

Complainant refers to rates, generally lower and uniform, on sand from points in and near Kansas City to destinations in the territory here considered. It shows that in a few instances the interstate rates on sand from Kansas City are the same as on crushed rock from Leeds and Rosedale to the same destinations, and with those exceptions range down to 5 cents lower. The average difference appears to be about 2.5 cents. The indicated average earnings are 12.5 mills per ton-mile and 62 cents per car-mile on sand, and 18 mills per ton-mile and 90 cents per car-mile on crushed rock. The car-mile earnings are based on a weight of 100,000 pounds.

Comparisons are also made with rates on chat from the Joplin district to the same general destination territory. These rates are
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generally lower, in many instances materially lower, than the rates assailed. Chat is a flint stone broken into small pieces, the waste material of ore concentration at the zinc and lead mines of that district. At the time of the hearing it was worth 50 cents per ton and crushed rock about \$2 per ton. The exhibits indicate an average revenue under the chat rates of about 10 mills per ton-mile and 59 cents per car-mile. Some of those rates are blanketed for long distances; one, for example, from 50 to 156 miles. The two commodities are used for practically the same purposes, such as road making and other construction work, and are in competition throughout this destination territory although complainant's witnesses testify that it is shut out from it on shipments southbound, and, since the increases under general order No. 28 of the Director General of Railroads, has been practically put out of business except in Kansas City. But they admit that complainant's disadvantage is due in some measure to the low grade and value of the chat, and nothing is submitted by which to gauge such prejudice as may be attributable to the rate adjustment, or to determine the appropriate rate relationship between the two commodities.

Complainant supports its contention that it is entitled to Kansas City rates by citing *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 350. In that case the defendant lines were operated as a unit and our finding of undue prejudice was predicated upon the facts and circumstances there presented. We made no finding of unreasonableness.

Defendants contend that on these two-line short hauls they are entitled to something more than on one-line hauls as recognized by the state commissions of Missouri and Kansas in establishing a two-line differential which in Missouri is 1 cent over single-line rates for distances up to 150 miles, and in Kansas generally 0.5 cent for distances up to 110 miles.

We find that the allegations of undue prejudice have not been sustained, but that the intrastate rates assailed were, during the period of federal control, and the interstate rates assailed were, are, and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed by more than 1 cent per 100 pounds the contemporaneous rates on the same commodity from Kansas City to the same destinations.

There is no proof of shipments or other evidence to support the prayer for reparation and it will be denied.

An appropriate order will be entered.

61 I. C. C.

No. 10554.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CANTON RAILROAD
COMPANY, ET AL.

Submitted August 20, 1919. Decided May 5, 1921.

Rate on crude sulphur (brimstone), in carloads, from Canton docks, Baltimore, Md., to Gibbstown and Carney's Point, N. J., found unreasonable. Reparation awarded, and measure of reasonable maximum rate prescribed for the future.

Harvey S. Farrow for complainant.*Henry Wolf Bikelé* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation manufacturing explosives at Gibbstown and Carney's Point, N. J., alleges that the rate charged on 22 carloads of crude sulphur (brimstone), shipped April 25 and 26, 1918, from Canton docks, Baltimore, Md., to Gibbstown and Carney's Point, was unreasonable. We are asked to award reparation and to establish a reasonable rate for the future. Rates will be stated in cents per 100 pounds.

The shipments moved over the defendant carriers' lines and charges were collected at the applicable sixth-class rate of 16 cents, minimum 40,000 pounds, governed by the official classification. The present rate applicable on this traffic is the sixth-class rate of 26.5 cents.

In support of its contention complainant cites *Union Sulphur Co. v. B. & O. R. R. Co.*, 39 I. C. C., 349, decided May 9, 1916. We found that the defendants in that case had justified the increased commodity rates on crude sulphur from Baltimore and other Atlantic ports to points in central territory which were equivalent to 80 per cent of sixth class. In *Du Pont de Nemours & Co. v. Director General*, 60 I. C. C., 221, we also found that the sixth-class rate applied on this traffic from New York, N. Y., to Philadelphia, Pa., Carney's Point and Paulsboro, N. J., and from Canton docks, Baltimore, to Philadelphia was unreasonable to the extent that it exceeded 80 per cent I. C. C.

cent of the sixth-class rate contemporaneously in effect from and to the same points, and awarded reparation accordingly.

Following the cases cited, and upon this record, we find that the rate assailed was and that the present rate is unreasonable to the extent that it exceeded or may exceed 80 per cent of the sixth-class rate contemporaneously in effect from and to the same points. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued upon the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

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No. 11514.

DAVIS MANUFACTURING COMPANY, INCORPORATED,
v.
DIRECTOR GENERAL, AS AGENT, LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS
NOS. 1548 AND 1952.

Submitted December 22, 1920. Decided May 5, 1921.

1. Rate on epsom salts in barrels, in carloads, from Atlanta, Ga., to Knoxville, Tenn., found unreasonable and unduly prejudicial. Reasonable maximum and nonprejudicial rates for the future prescribed. Reparation awarded.
2. Fourth section relief denied.

Daniel J. Kelly for complainant.

C. B. Northrop and *C. J. Rizey, jr.*, for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation engaged in the manufacture of druggists' sundries at Knoxville, Tenn., by complaint filed June 3, 1920, alleges that the sixth-class carload rate of 34 cents per 100 pounds applicable on epsom salts in barrels from Atlanta, Ga., to Knoxville, was and is unreasonable and unduly prejudicial in violation of sections 1, 2, 3, and 4 of the interstate commerce act and section 10 of the federal control act. We are asked to prescribe a rate not exceeding 23.5 cents per 100 pounds and to award reparation.

Portions of fourth section applications numbered 1548, filed by the Southern, and 1952, filed by the Louisville & Nashville, by which the carriers named as parties thereto ask authority to continue to charge for the transportation of epsom salts from Atlanta to Cincinnati, Ohio, rates which are lower than rates contemporaneously maintained on like traffic to Knoxville and other intermediate points, were heard with the complaint. No evidence in support thereof was submitted by the Louisville & Nashville.

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Rates will be stated in cents per 100 pounds, and are those in effect prior to the general increases of 1920.

On June 25, 1918, the former sixth-class rate of 27 cents from Atlanta to Knoxville was increased to 34 cents. The rating on epsom salts was changed from sixth to fifth class on August 15, 1920, resulting in an increased rate of 40 cents.

In October, 1919, complainant applied for a commodity rate of 23.5 cents, 1 cent higher than the rate to Chattanooga, Tenn., and 1.5 cents less than that to Cincinnati. Defendants offered to establish the Cincinnati rate of 25 cents. Knoxville is intermediate on the direct line of the Louisville & Nashville from Atlanta to Cincinnati. The shipments moved over the Southern or the Louisville & Nashville.

Complainant receives approximately one carload monthly of epsom salts, packed in barrels, from Atlanta. The contract price in 1920 was \$2.25 per 100 pounds f. o. b. Atlanta. Complainant asserts that it has never filed any claim for damage. Its competitors are at Memphis, Nashville, and Chattanooga, Tenn., Louisville and Lexington, Ky., and Cincinnati.

Comparisons follow of the present and proposed rates to Knoxville with commodity rates on the same traffic to other points:

	Distance.	Rates.	Revenue per ton-mile.
	Miles.	Cents.	Miles.
From Atlanta, Ga., to—			
Knoxville, Tenn.....	196	34	34.6
Do.....	196	23.5	24
Louisville, Ky.....	474	25	10.6
Cincinnati, Ohio.....	474	25	10.6
Memphis, Tenn.....	414	25	12.1
Nashville, Tenn.....	280	25	17.3
Jacksonville, Fla.....	348	25	14.4
Chattanooga, Tenn.....	127	22.5	32.8
New Orleans, La.....	498	25	10.1
Lexington, Ky.....	400	25	12.2

¹ Short-line, L. & N. Southern Ry., 223 miles.

² Present rate.

³ Proposed rate.

⁴ Short-line, L. & N. Southern Ry., 499 miles.

⁵ Short-line, W. & A. Southern Ry., 152 miles.

The evidence for defendants shows that originally a 20-cent rate was established from Atlanta to Cincinnati, 474 miles, and to other Ohio River crossings in competition with a 9-cent rate from Cleveland, Ohio, 262 miles, and a 16-cent rate from Baltimore, Md., 590 miles; and that following *The Five Per Cent Case*, 31 I. C. C., 351, *The Fifteen Per Cent Case*, 45 I. C. C., 303, and general order No. 28, these rates were increased to 15.5 cents from Cleveland to Cincinnati, and to 25 cents from Baltimore and Atlanta to Cincinnati.

Defendants state that the Louisville & Nashville endeavored to establish a rate of 29 cents from Atlanta to Knoxville, but desiring

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to avoid litigation proposed a 25-cent rate in response to complainant's request for a rate of 23.5 cents. They observe that if the same rate per mile that applies to Chattanooga were applied to Knoxville the rate would be 32 cents, or 2 cents less than the sixth-class rate assailed. The rate from Ohio River crossings to Knoxville at the time of hearing was 41.5 cents. From Baltimore to Knoxville, water and rail, it was 57.5 cents, and all rail 60 cents. Defendants therefore assert that, competition considered, complainant could well afford to pay a rate of 34 cents from Atlanta. They point out that rates on manufactured articles, such as cotton goods and pig and manufactured iron, to the Ohio River from the south are on a lower basis than to intermediate points. Defendants conceded that the 25-cent rate to the Ohio River was not unremunerative, but contend that it was unreasonably low.

Complainant submitted no evidence of any damage due to the alleged undue prejudice.

We find that the rate assailed was, at the time the shipments moved, unreasonable and unduly prejudicial to the extent that it exceeded 23.5 cents per 100 pounds and is and for the future will be unreasonable and unduly prejudicial to the extent that it exceeds, or may exceed, 23.5 cents per 100 pounds plus the general increase authorized in 1920. We further find that the shipments were made as described and that complainant paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

Defendants' fourth section applications will be denied in so far as rates to Knoxville and points between Atlanta and Knoxville are concerned. The remaining portions will be left for consideration upon a more complete record.

Appropriate orders will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1298.
FRESH MEATS AND DRESSED POULTRY FROM OHIO
RIVER CROSSINGS TO SOUTHEASTERN POINTS.

Submitted April 12, 1921. Decided May 17, 1921.

Proposed increase of 0.5 cent per 100 pounds in commodity rates on fresh meats and dressed poultry, in carloads, from Cairo, Ill., and Ohio River crossings to destinations in the southeast found not justified. Suspended schedules ordered canceled.

Charles J. Rixey, H. L. Walker, Robert N. Nash, and F. H. Law for respondents.

R. D. Rynder and Paul E. Blanchard for protestants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCORD, MEYER, AND ATTCHISON.

MEYER, *Commissioner*:

By schedules filed to become effective February 18, 1921, respondents propose to increase by 0.5 cent per 100 pounds their commodity rates on fresh meats and dressed poultry, in carloads, from Cairo, Ill., and Ohio River crossings to destinations in the southeast. Upon protest by Armour & Company and Swift & Company we suspended the operation of the proposed schedules until June 18, 1921. Rates will be stated in amounts per 100 pounds.

Fresh meats and dressed poultry move into the southeast from points beyond the Ohio and Mississippi rivers on combination rates based on the river crossings. Proportional rates are published from Kansas City, Mo., and other Missouri River packing-house points, Wichita, Kan., Oklahoma City, Okla., and Fort Worth, Tex., to the river crossings on traffic destined beyond which are lower than the local rates to the river crossings proper. For years prior to June 25, 1918, the carriers operating to the river crossings from the west maintained rates 4 cents lower to Cairo and Ohio River crossings than to Memphis, Tenn., and the carriers operating from the river crossings maintained rates 4 cents lower from Memphis than from Cairo and Ohio River crossings, to southeastern points, so that there was no difference in the amount of the through rates via any gateway to destinations in the southeast. On that date, under general order No. 28 of the Director General, the difference between the rates to Cairo

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and Ohio River crossings and Memphis, became 5 cents, but the through rates were the same whether the traffic moved through Cairo and Ohio River crossings or through Memphis. On August 26, 1920, following our authorization entered July 29, 1920, the rates to the river crossings were increased 35 per cent and the rates from the river crossings 25 per cent. The percentage increases, accentuated by the application of the rule for the disposition of fractions, had the effect of further widening the difference in the rates to the river crossings, in some instances to 6.5 cents and in others to 7 cents. The same relative situation obtained with respect to the rates from the river points to points in the southeast, the difference becoming in some cases 6 cents and in others 6.5 cents. The result was that the rates from Kansas City and certain other western points to Atlanta, Ga., and 106 other points in the southeast became 1 cent, and to Birmingham, Ala., and 147 other points in the southeast 0.5 cent, higher through Memphis than through Cairo. The rates from Wichita and other points to Birmingham and 147 other southeastern points remained the same through both gateways.

On December 2, 1920, the carriers operating to the river crossings effected increases of 0.5 cent in the rates to Cairo and Ohio River crossings when such rates were 7 cents lower than to Memphis, with the result that the rates to Cairo and Ohio River crossings thereafter became uniformly 6.5 cents less than the rates to Memphis. A formal complaint filed by one of the protestants, assailing the increase on December 2, 1920, is now pending. At present the rate from Kansas City to Atlanta is made up of 37.5 cents to Cairo and 75 cents beyond, or \$1.125, while through Memphis the through rate is composed of 44 cents to Memphis and 69 cents beyond, or \$1.13. The suspended schedules would increase by 0.5 cent the rates from Cairo and Ohio River crossings to southeastern points in those instances where the through rates from points beyond are higher through Memphis than through Cairo, equalizing the rates via all gateways. Approximately 41.9 per cent of the rate-basing points in the southeast would be affected by such increases.

Respondents state that the purpose of filing the suspended schedules is to place the rates through Cairo and Ohio River crossings on a parity with the rates through Memphis, which relationship had existed for many years. They state that proportional rates from Kansas City to the river crossings were established for the purpose of enabling Kansas City packers to meet the competition from St. Louis, East St. Louis, and Chicago, and are considerably lower than the rates to these crossings proper, and lower than the local rates to points in Oklahoma and Arkansas, the distance to Memphis being greater. Had the through rates from Kansas City

and Chicago to southeastern points been published as joint rates, they would have been subject to an increase of $33\frac{1}{3}$ per cent under Ex Parte 74, and the resulting rates would have been higher than the rates increased as proposed. The respondents also introduced testimony purporting to show the low level of the rates in the southeast.

The proposed increases are in excess of those authorized by us on July 29, 1920; and, although the increase is slight, protestants estimate that it will result in an addition of from \$10,000 to \$15,000 per year in the revenue which respondents receive from protestants on this traffic. Protestants urge that the equalization of rates via these gateways is of advantage to the carriers but not to the shippers, as they do not have to route their shipments to the southeast through Memphis, and the rates through Cairo are now the same as or lower than the rates through Memphis. They urge that it has been customary in the past for the carriers to observe the lower rates through any one river crossing as the maximum rate to apply through all other crossings, and that the equalization of the routes to the southeast can be accomplished as well by reductions in the rates through Memphis as by the proposed increase in the rates through Cairo and Ohio River crossings.

Upon consideration of the record we find that the respondents have not justified the proposed increased rates. An order will be entered requiring the cancellation of the suspended schedules and discontinuing this proceeding.

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No. 10422.

LEHIGH PORTLAND CEMENT COMPANY.

v.
DIRECTOR GENERAL, MIDLAND CONTINENTAL
RAILROAD, ET AL.

Submitted November 16, 1920. Decided May 10, 1921.

Rates on cement, in carloads, from Mason City, Iowa, to points in North Dakota and to points in northern Minnesota found to be unreasonable and to be unduly prejudicial to Mason City as compared with the rates from Duluth (Steeltown), Minn., to the same points. Reasonable and nonprejudicial rates prescribed.

F. E. Paulson and E. S. Gubernator for complainant and Northwestern States Portland Cement Company, interveners.

Murray N. Billings, George Low, and F. T. Bentley for Universal Portland Cement Company and *W. S. Morrison* for Three Forks Portland Cement Company, interveners.

Frank Lyon for Atlas Portland Cement Company.

J. N. Davis for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS HALL, DANIELS, EASTMAN, AND ESCH.

DANIELS, *Commissioner*:

The issues in this proceeding were made the subject of a proposed report which was served on the parties. Exceptions were filed and oral argument had.

Complainant corporation is engaged in the manufacture of cement at Mason City, Iowa. By complaint filed January 23, 1919, as amended, it assails the rates on portland cement, in carloads, from Mason City to points in North Dakota and to points in northern Minnesota as unreasonable, unjustly discriminatory, and unduly prejudicial. The destination territory embraces North Dakota and that part of Minnesota north of the line of the Great Northern Railway extending from Duluth, Minn., southwestwardly to Granite Falls, Minn., and north of the line of the Chicago, Milwaukee & St. Paul Railway extending from Granite Falls through Ortonville and Graceville, Minn., to the northern boundary of South Dakota. Cement manufacturers located at Steeltown, Minn., are alleged to be

unduly preferred. Future relief only is asked. Rates will be stated herein in cents per 100 pounds and the rates described as present rates do not include the increases authorized in *Increased Rates*, 1920, 58 I. C. C., 220, hereinafter referred to as Ex Parte 74.

The Northwestern States Portland Cement Company, also engaged in the manufacture of cement at Mason City, intervened in support of the complaint. The Atlas Portland Cement Company, Hannibal, Mo., was also represented. The cement manufacturer located at Steelton, the Universal Portland Cement Company, intervened in opposition to the relief sought. The Three Forks Portland Cement Company, with mills at Trident and Hanover, Mont., also intervened, but introduced no evidence. A copy of the complaint, together with notice of hearing, was transmitted to the Minnesota Railroad and Warehouse Commission, but that commission was not represented at the hearing.

Mason City is in northern Iowa, 130 miles south of St. Paul, Minn. The mills of complainant and the Mason City intervener, hereinafter collectively referred to as complainants, are served by the Chicago Great Western, Minneapolis & St. Louis, Chicago & North Western, and Chicago, Rock Island & Pacific railways. The Chicago, Milwaukee & St. Paul Railway, hereinafter termed the Milwaukee, also serves Mason City, but does not reach complainants' mills. Steelton is 8.5 miles southwest of Duluth over the Duluth, Missabe & Northern Railway. The cement mill at Steelton is served only by the last-named carrier. In *Western Cement Rates*, 48 I. C. C., 201; 52 I. C. C., 225, hereinafter referred to as the *Cement Case*, Duluth was used as a point of production instead of Steelton, and the scale rates were based on the distances from the former point; and in this report the same course will be followed. The rates from Duluth to the destinations here involved, on or reached in connection with the lines of the principal carriers, the Minneapolis, St. Paul & Sault Ste. Marie, hereinafter termed the Soo line, Northern Pacific, and Great Northern, respectively, apply via Pokegama or Saunders, Wis. The Northern Pacific also connects with the Duluth, Missabe & Northern at Duluth, from which point it has an intrastate route to points in Minnesota, but on account of operating conditions the traffic moves from Steelton over the interstate route. To points on the Duluth, Missabe & Northern the movement is intrastate.

In the *Cement Case* we prescribed reasonable maximum rates for the interstate transportation of cement, in carloads, between points in western trunk line territory and between points in western trunk line territory and certain territories adjacent thereto. Specific rates were generally prescribed from the various mills to so-called key

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points, one of which was St. Paul, and distance scale rates were prescribed to points to which specific rates were not provided.

As amended by the supplemental report, scale II applies between points in Illinois, Wisconsin, northern Michigan, southern Minnesota, Iowa, and northern Missouri; scale III applies between certain points in Missouri, in the eastern parts of South Dakota, Nebraska, and Kansas, and in a small portion of southwestern Minnesota; and scale IV applies in the central and western parts of South Dakota, Nebraska, and Kansas, and in eastern Colorado. The northern boundary of scale territory II in part follows the line of the Great Northern from Duluth through Willmar, Minn., to Granite Falls; the northern boundary of scale territory III follows the line of the Milwaukee from Granite Falls through Ortonville and Graceville to the northern boundary of South Dakota, thence west along the boundary to the intersection with the branch of the Milwaukee extending from Aberdeen, S. Dak., to Edgeley, N. Dak.; and the northern boundary of scale territory IV follows the northern boundary of South Dakota west of the Aberdeen-Edgeley branch of the Milwaukee. The report provided that distance rates between points in different territories should be based on the average of the rates for the entire distance under the scales in effect in the different territories through which the shipments moved. In *Cement to Montana*, 48 I. C. C., 402, we approved the inclusion within scale territory IV of points on the Chicago, Burlington & Quincy Railroad in Montana and Wyoming.

In our original report in the *Cement Case*, at pages 250 and 251, we referred to the methods which then prevailed of making through rates to points north and west of St. Paul and to points west of the Missouri River on basis of the combinations. The carriers contended that the combination basis was proper, while certain shippers contended that it resulted in an unreasonably high level of rates. The following is an excerpt from that report:

In South Dakota and Nebraska certainly the movement of cement from originating points east of the Missouri River is dominated by such systems as the Burlington, the North Western, and the Milwaukee. The rate-breaking points at the Missouri River have no significance for them, as their lines extend eastward to Chicago and northwestward into the far west. The principal movements of cement from origin to destination are generally one-line hauls, and the single lines undoubtedly make the rates on cement for the territory. Three-quarters of the entire movement into South Dakota is over the Milwaukee and the North Western.

No good reason appears why under such circumstances the adjustment of cement rates should continue to be made on the combination of locals. But the situation is quite different at St. Paul. While all these three carriers reach that point, the St. Paul gateway is used primarily in connection with northern carriers which terminate there. The next question is whether this principle results in a reason-

able system of rates. The Northern Pacific has shown an entirely different set of conditions prevailing in the territory served by it from what prevails south of the northern lines. The rates appear to be high in North Dakota in comparison with the average in the states south, but the witness maintains that they are now in proper relationship to the rates from the mills farther west along the lines of the northern carriers. There are, of course, instances where the rule of combinations is departed from by the northern carriers, but the witness insists that this is done only at junction points to meet the competitive rates of single-line carriers. Upon a full consideration of all the facts of record, we are of opinion and find that the present basis of making rates upon the combination of locals on St. Paul is not unreasonable upon cement traffic to points beyond St. Paul which are not included within the rate scale territories herein prescribed.

At the hearing no evidence was submitted by defendants, and their counsel moved to dismiss the complaint on the ground that the issues presented were considered and determined in the *Cement Case*; and, further, if that motion be denied, that the *Cement Case* be reopened for further investigation and consolidated for hearing with this proceeding. In support of the latter motion it was urged that the rates from other producing points must also be revised if changes are made necessary herein. A petition, filed by the Universal Portland Cement Company, asking that the *Cement Case* be reopened to the extent necessary and consolidated with this proceeding was denied on April 7, 1919. We are of opinion that the issues raised by the complaint can and should be decided on the present record.

The mill of the Northwestern company commenced operations in 1909 and that of the Lehigh company in 1911. There were then no other mills in the northern Mississippi Valley territory, and competition in northern Minnesota and North Dakota was with producers located south of Mason City and with producers in Michigan and certain other states who shipped by water to Duluth and thence by rail. Mason City was the nearest producing point to the destinations in question until the Steelton mill was constructed in 1916.

Prior to January 25, 1915, the rate from both Mason City and Duluth to St. Paul was 5 cents and the lake rate to Duluth from Alpena, Mich., the nearest producing point east thereof, was 5 cents. The rate from Mason City and Duluth to St. Paul was increased to 6 cents on that date, in accordance with *Cement Rates from Points in Illinois*, 32 I. C. C., 369, and under general order No. 28 the 6-cent rate was increased to 8 cents on June 25, 1918. In the *Cement Case*, decided January 15, 1918, key-point rates were prescribed to St. Paul of 7 cents from Mason City and 7.3 cents from Duluth, 151 miles, and as increased under general order No. 28 the rate from Mason City was made 9 cents and from Steelton 9.5 cents on August 8, 1918, the effective date of the order in the *Cement Case*.

Commodity rates about the same as class D are usually maintained on cement from Duluth and St. Paul to the points of destination here involved. To points in western and northwestern Minnesota and in North Dakota the rates are generally the same from St. Paul and Duluth. Prior to June 25, 1918, the through rates from Mason City, with some unimportant exceptions, were based on the combinations on St. Paul. Under general order No. 28 the through rates from Mason City were increased 2 cents, which resulted in through rates 2 cents less than the combinations on St. Paul. The rates prescribed in the *Cement Case* resulted in a further increase of 1 cent in the rates from Mason City to the points here involved, but no increase was made in the rates from Steelton to the same points except for the 2-cent increase under general order No. 28.

The following table shows the rates and distances from Mason City and Duluth to representative points in northern Minnesota or in North Dakota on or east of the line of the Milwaukee extending from the South Dakota state line to Edgeley, thence Northern Pacific through La Moure and Jamestown, N. Dak., to Leeds, N. Dak., thence Great Northern through Church's Ferry and Rolla, N. Dak., to the Canadian boundary, hereinafter defined as extended scale territory III, together with the distances from St. Paul. For comparative purposes the rates which would apply under an average of scales II and III from Mason City and those which would apply under scale III from Mason City and Duluth are also shown.

To—	From Mason City.					From Duluth.		
	Distance.	Distance beyond St. Paul.	Present rate.	Average of scales II and III.	Scale III.	Distance.	Present rate.	Scale III.
	Miles.	Miles.	Cents.	Cents.	Cents.	Miles.	Cents.	Cents.
Northern Pacific:								
Kimberly, Minn.....	311	176.1	18	14.5	16.5	72.5	7.5	9
Brainerd, Minn.....	272	187.1	16	14	15.5	111.5	9	10.5
Staples, Minn.....	274	189.8	16	14	16.5	141.2	9.5	11.5
Sauk Rapids, Minn.....	210	75.8	14.5	12.5	13.5	172.8	10.5	12.5
Manitoba Junction, Minn.....	357	222.2	19	15.5	17.5	223.6	12	14
Fargo, N. Dak.....	385	250.5	21	16	18	251.9	14	15
Jamestown, N. Dak.....	478	343.2	29	18	20.5	344.6	22	17
Pembina, N. Dak.....	545	410.4	30.5	19.5	22.5	411.8	23.5	19
Average.....	354	219.4	20.5	15.5	17.4	216.2	13.5	12.6
Great Northern:								
Swan River, Minn.....	326	235.2	18	15.5	16.5	91.9	7.5	10
Deer River, Minn.....	360	259	20	16.5	17.5	125.7	10	11
Cass Lake, Minn.....	391	307.5	19.5	16.5	18.5	164.7	11	12
Sauk Center, Minn.....	281	117.1	15.5	13.5	15	181.5	10.5	13
Evansville, Minn.....	288	159.4	15.5	14.5	16	223.8	11.5	14
Crookston, Minn.....	433	299.3	20.5	17	19.5	271.6	13.5	15.5
Larkspur, N. Dak.....	493	331.2	25.5	18	20	324.4	15.5	16.5
Devils Lake, N. Dak.....	519	385.1	30.5	19	21.5	385.3	23.5	18.5
Average.....	380	254.2	20.8	16.3	18	221.1	13.3	13.8

To—	From Mason City.					From Duluth.		
	Dis- tance.	Dis- tance beyond St. Paul.	Pre- sent rate.	Average of scales II and III.	Scale III.	Dis- tance.	Pre- sent rate.	Scale III.
Soo line:	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Kettle River, Minn.....	233	114.4	16.5	12.5	15	64.4	7	5.5
Portage Lake, Minn.....	345	200	19.5	15.5	17	146.1	10.5	11.5
Brookton, Minn.....	353	119.2	18.5	12.5	15	188.1	12.5	13
Glenwood, Minn.....	268	135	16	13.5	15	203.9	11	13.5
Nashua, Minn.....	325	191	18	15	16.5	290	12	15
Bronson, Minn.....	503	369.7	22	19	21.5	304.9	14.5	16
Fordville, N. Dak.....	488	404	27.5	19	23	339.1	21.5	17
Egeland, N. Dak.....	610	475.9	32.5	21	24	411.1	25.5	19
Average.....	387	251.9	20.9	16.3	18.3	238.5	14.2	14.2
Duluth, Missabe & North:								
Proctor, Minn.....	295	168	15.5	14.5	16	5	5	7
Culver, Minn.....	316	177.6	16	14.5	16.5	26	5.5	7.5
Iron Junction, Minn.....	351	212.3	17.5	15.5	17.5	61	7	9
Coleraine, Minn.....	372	232.9	18.5	16	18	82	8	9.5
Average.....	334	194.5	16.9	15.1	17	43.5	6.4	8.3
Grand average.....	368	235.1	20.2	16	17.3	199.3	12.6	13

The following table shows similar data with respect to representative points in North Dakota west of the lines above referred to, hereinafter termed extended scale territory IV:

To—	From Mason City.						From Duluth.			
	Dis- tance.	Distance beyond St. Paul.	Present rate.	Average of scales II, III and IV.	Average of scales III and IV.	Scale IV.	Dis- tance.	Present rate.	Average of scales III and IV.	Scale IV.
Northern Pacific:	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Bismarck, N. Dak..	568	444.7	34	23	25.5	28	446.1	27	22	24.5
Dickinson, N. Dak..	683	560.2	40	25	29	32	561.6	33	25.5	28
Beach, N. Dak.....	748	624.8	42	27	31	34	626.2	36	27.5	30
Great Northern:										
Rugby, N. Dak.....	576	442.2	32.5	23	25.5	28	442.9	25.5	22	24.5
Minot, N. Dak.....	609	475.6	35.5	23	27	29.5	503	29.5	24	26.5
Buford, N. Dak.....	751	617.2	39	27	31	34	644.6	32	28	31
Soo line:										
Wishek, N. Dak.....	498	354.9	31	30.5	28	25.5	423.9	24	21	24
Kenmare, N. Dak..	666	532.7	37	25	28.5	31	556.1	30	25.5	27.5
Fortuna, N. Dak..	753	618.8	43.5	27	31	34	642.3	36.5	28	31
Average.....	649	519	37.2	24.6	27.9	30.7	538.5	30.4	24.8	27.4

The average differences in distances and rates in favor of Duluth as compared with Mason City to the extended scale-III points shown are: Northern Pacific points, 137.8 miles and 7 cents; Great Northern points, 158.9 miles and 7.5 cents; Soo line points, 148.5 miles and 6.7 cents; and Duluth, Missabe & Northern points, 290.5 miles and 10.5 cents. The average differences in distance in favor of Duluth as

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compared with St. Paul are 3.2 miles to Northern Pacific points, 33.1 miles to Great Northern points, 13.4 miles to Soo line points, and 151 miles to Duluth, Missabe & Northern points. The average differences in distances and rates in favor of Duluth as compared with Mason City to the extended scale-IV points are 110.5 miles and 6.8 cents. The average difference in distance in favor of St. Paul as compared with Duluth is 19.5 miles.

The present rates from Mason City and Duluth to points here involved are out of alignment with rates prescribed in the *Cement Case* to points near the northern boundaries of the various scale territories. To St. Cloud, Minn., a scale-II point, the rate from Mason City is 11 cents for a distance of 209 miles and from Duluth 9.5 cents for a distance of 139 miles, or a difference of 1.5 cents in favor of Duluth, whereas to St. Joseph, Minn., 7 miles west of St. Cloud, the difference in favor of Duluth is 3.5 cents. To Graceville, Minn., a scale-III point, the rate from Duluth is 1 cent lower than that from Mason City, and the distance is 17 miles less, whereas the rate from Duluth to Johnson, Minn., 7 miles east of Graceville, is 4.5 cents less. To White Rock, S. Dak., another scale-III point, the rate from Mason City is 1 cent less than that from Duluth, the distance from Duluth being 45 miles greater, and to Blackmer, N. Dak., 4 miles north thereof, the rate from Duluth is 3.5 cents less than that from Mason City.

The rates from Duluth to Minnesota points are based generally on the Minnesota intrastate scale plus an increase of 2 cents under general order No. 28. This scale applies for distances up to 400 miles, and the rates as increased range from 1.5 to 2.5 cents less than the scale-III rates prescribed in the *Cement Case*. To many points in Minnesota the rates from Duluth are less than the Minnesota intrastate scale; the average rate to 49 points in the territory here involved being about 0.75 cent lower.

A large part of the movement from Mason City to the Minnesota destinations on the Great Northern is through scale territory II, the distances to the principal gateways, St. Cloud and Willmar, being 209 and 236 miles, respectively, while the movement from Duluth to the same points is in large part north of scale territory II. Notwithstanding this fact, the rates from Mason City are generally higher than the scale-III rates, while the Duluth rates are lower in every instance, as is shown in the following statement:

	From Mason City.	From Duluth.
Lower than scale II.....	4 points.	61 points.
Same as scale II.....	1 point.	26 points.
Lower than scale III.....	11 points.	147 points.
Same as scale III.....	23 points.	
Over scale III.....	196 points.	

The rates from Mason City and Duluth to points in North Dakota are usually higher than scale IV, but the rates from the former point are relatively higher than those from Duluth.

With respect to cement traffic to all points in scale territories II, III, and IV the right of Duluth to compete with Mason City under the same scale or scales of rates was recognized in the *Cement Case*. There is clearly no justification for the maintenance of higher rates mile for mile from Mason City than from Duluth to the destination territory in question. In the *Cement Case* we declined to disturb the then existing method of constructing rates on the St. Paul combination. However, at that time Duluth had not become an important factor in the shipment of cement in competition with Mason City, most of the cement shipped from Duluth originating at Michigan points and paying for the movement up to Duluth practically the same rate that Mason City paid for the movement up to St. Paul. In the *Cement Case* we also called attention to the fact that the rates to North Dakota points appeared to be high as compared with the average of the states south, although we observed that they appeared to be properly aligned with the rates from mills farther west along the lines of the northern carriers. As heretofore stated, the transportation conditions from St. Paul and Duluth to the territory in question are substantially the same, and for many years the rates to points in western Minnesota and in North Dakota have been about the same from Duluth as from St. Paul. At the same time we have found herein that to the destination territory involved Mason City is entitled to a basis of rates no higher than from Duluth. This relief is denied to Mason City under the present method of constructing through rates from Mason City on the St. Paul combination, notwithstanding the fact that to certain destinations there are shorter available routes than via St. Paul.

In the *Cement Case* traffic density, among other things, was considered in determining the boundaries of the various scale territories. As heretofore stated, the northern boundary of scale territory II in part extends southwestwardly from Duluth over the line of the Great Northern to Granite Falls. The population per square mile in Minnesota in 1910 was 25.6; south of the forty-fifth degree of latitude, substantially an average of the northern boundary of scale territory II, the population per square mile was 41.7 and north thereof 18.3. To points in eastern South Dakota we prescribed scale III rates. The conditions in eastern North Dakota do not appear to be sufficiently dissimilar from those in eastern South Dakota to warrant a higher basis of cement rates for application within the former territory. The density of population in eastern North Dakota is greater than in central and western North Dakota. Scale territory

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III should be extended to include points in Minnesota north of scale territories II and III and to include points in North Dakota on or east of the following lines: The Milwaukee; from the South Dakota boundary to Edgeley, thence Northern Pacific through La Moure and Jamestown to Leeds, thence Great Northern through Church's Ferry and Rolla to the Canadian boundary. Scale territory IV should be extended to include points in North Dakota west of the lines referred to.

Complainants ask that the *Cement Case* scale rates and basis of constructing through rates where traffic originates in one territory and is delivered in another, that is, adding together the various rates and dividing by the number of groups through which shipments move, be established for the future. This would not only necessitate radical reductions in the present rates from Mason City, but would result in the application of the same rate from Mason City as from Duluth to a point approximately 100 miles nearer to Duluth than to Mason City. For example, as already shown, the grand average rate from Mason City to 28 representative points in scale territory III under scales II and III would be 16 cents, and the scale-III rate from Duluth would be 13 cents, or a difference of 3 cents for a difference of 168.7 miles. The average rate from Mason City to nine representative points in scale territory IV under scales II, III, and IV would be 0.2 cent lower than the scale III and IV rates from Duluth, although the distance from Mason City is 110.5 miles greater. Complainants expressly disclaim any desire to reduce the revenues of the carriers on this traffic, but insist that they are primarily interested in securing a proper adjustment of rates as compared with Duluth. In the *Cement Case*, points in the Kansas gas belt, although located in scale territory III, were accorded scale-II rates into scale territory II. In the supplemental report in the *Cement Case*, in referring to the results reached by averaging scale rates when a number of territories are traversed by the movement, we stated that the amalgamation under that decision of scales I and II would largely eliminate situations of that kind where practical injustice resulted, and that any such situations which were not corrected by that decision could be brought to our attention. The average haul for cement in the scale territories prescribed in the *Cement Case* is perhaps not over 250 miles, while from producing points to the destination territory here involved the hauls are for much greater distances. There is no cement mill in this territory between Duluth and Trident, a distance of 1,064 miles, and in this and other respects the conditions differ from those which prevail in the general territory to the south, and warrant a departure from the general rule followed in the *Cement Case* of averaging the scale rates. Scale III

should be used from Mason City and Duluth to points in northern Minnesota and in eastern North Dakota in extended scale territory III, and scale IV should be used from those producing points to points in central and western North Dakota in extended scale territory IV.

We find that the rates assailed from Mason City are, and for the future will be, unreasonable to the extent that they exceed scale-III rates prescribed in the *Cement Case*, as increased under general order No. 28 and Ex Parte 74, to points in Minnesota and North Dakota in the extended scale territory III, and to the extent that they exceed scale-IV rates prescribed in the *Cement Case*, as increased under general order No. 28 and Ex Parte 74, to points in North Dakota in the extended scale territory IV, distances to be computed under the rules laid down in the supplemental report in the *Cement Case*. We further find that the rates from Mason City to the extended scale territories III and IV are, and for the future will be, unduly prejudicial to Mason City to the extent that they exceed the rates from Duluth to the same destinations by more than the differences between the rates found reasonable from Mason City and rates from Duluth constructed under scale III, as increased under general order No. 28 and Ex Parte 74, to the extended scale territory III, and under scale IV, as similarly increased, to the extended scale territory IV, distances to be computed in the same manner as from Mason City.

While the mills at Hannibal and other points south of Mason City are not asking any specific relief in this proceeding, which relates solely to the rates from Mason City as compared with those from Duluth, the rates from the producing points south and from Gilmore City, Iowa, are related to the rates from Mason City, and counsel for defendants have suggested that some expression should be given as to the proper adjustment to be made in those rates if any change is ordered in the basis of rates from Mason City. We express the tentative view that the present differential of Gilmore City over Mason City upon a movement to St. Paul should not be exceeded and that the rates from the other related producing points should not exceed the rates from Mason City by any greater amounts than the amounts by which the key-point rates from such producing points to St. Paul exceed the corresponding key-point rate from Mason City to St. Paul.

An appropriate order will be entered.

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No. 11238.

BUXTON-SMITH COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted November 6, 1920. Decided May 5, 1921.

Rates on fresh fruits and vegetables, in mixed carloads, from Los Angeles and San Francisco, Calif., to Bisbee and Douglas, Ariz., found unreasonable. Reasonable maximum rates prescribed and reparation awarded.

E. R. Ramaker for complainant.

Roland Johnston for Chamber of Commerce, Phoenix, Ariz; *F. A. Jones* for Arizona Corporation Commission; and *Hugh H. Williams* for State Corporation Commission of New Mexico, interveners.

Frank B. Austin, E. W. Camp, Del W. Hartington, and G. H. Baker for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Upon consideration of the record we have reached conclusions differing from those suggested by him.

Complainant is a corporation dealing in fruits and vegetables at Bisbee and Douglas, Ariz. By complaint filed February 16, 1920, as amended, it alleges that the commodity rates on fresh fruits and vegetables, in mixed carloads, moving subsequent to January 1, 1916, from San Francisco and Los Angeles, Calif., and points taking the same rates, to Bisbee and Douglas, were and are unjust and unreasonable to the extent that they exceeded and exceed the class-C rates; and that the class-C rates are unreasonable and unduly prejudicial as compared with the rates to competitive points. We are asked to award reparation and to establish reasonable rates for the future. Rates are stated in amounts per 100 pounds and are those in effect prior to the increases authorized by us on July 29, 1920.

The Chamber of Commerce of Phoenix, Ariz., the Arizona Corporation Commission, and the State Corporation Commission of New Mexico intervened in support of the complaint.

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Bisbee and Douglas are on the El Paso & Southwestern, respectively 1,092 and 1,107 miles from San Francisco and 608 and 623 miles from Los Angeles. The shipments moved in refrigerator cars over the Southern Pacific to Tucson, Ariz., and thence over the El Paso & Southwestern.

Prior to June 25, 1918, the commodity rates on this traffic were \$1 from San Francisco to Bisbee and Douglas, and 90 cents from Los Angeles. The class-C rate from San Francisco to the named points was 83 cents, and from Los Angeles 74 cents to Bisbee and 76 cents to Douglas. On June 25, 1918, these rates were increased 25 per cent pursuant to general order No. 28 of the Director General of Railroads, with the result that the commodity rates became \$1.25 from San Francisco to Bisbee and Douglas, and \$1.125 from Los Angeles. The class-C rate from San Francisco to the same points became \$1.04; from Los Angeles 92.5 cents to Bisbee and 95 cents to Douglas. These class-C rates are governed by western classification and exceptions thereto.

Complainant secures the greater part of its fruits and vegetables from points in California. It received annually, during the four years preceeding the hearing in April, 1920, from 25 to 50 mixed carloads. From points in other states it obtained during the same period three or four carloads annually. It receives no straight carloads of either fruits or vegetables. Complainant distributes northward towards Tucson and eastward towards El Paso, Tex., and competes with jobbers located at Tucson and El Paso. It asks for rates of 90.5 cents from San Francisco to Bisbee and Douglas and 83 cents from Los Angeles.

The joint agency tariff containing exceptions to the western classification applicable in this territory has for a number of years rated fruits and vegetables, in mixed carloads, class C. The history of this rating and of the commodity rates higher than the class-C rates is discussed in *Rates on Fruits and Vegetables*, 30 I. C. C., 56. We did not in that proceeding consider separately the specific rates here assailed.

The subjoined table is taken from complainant's exhibits, except that the car-mile earnings are based on a weight of 29,000 pounds, testified by a traffic official of the Southern Pacific to be the average loading of this class of traffic. The rates are those effective June 25, 1918:

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	Distance.	Commodity rates.			Class-C rates.		
		Rate.	Ton-mile earnings.	Car-mile earnings.	Rate.	Ton-mile earnings.	Car-mile earnings.
From San Francisco to—	Miles.	Cents.	Mills.	Cents.	Cents.	Mills.	Cents.
Bisbee, Ariz.....	1,092	125.	22.89	33.19	104.	19.05	27.62
Douglas, Ariz.....	1,107	125.	22.58	32.75	104.	18.79	27.24
Tucson, Ariz.....	983	114.	23.19	33.63	81.5	15.58	24.04
Albuquerque, N. Mex.....	1,898	104.	17.96	26.13	104.	17.86	25.16
Deming, N. Mex.....	1,207	125.	20.71	30.03	104.	17.23	24.99
El Paso, Tex.....	1,296	125.	19.29	27.97	104.	16.06	23.27
From Los Angeles to—							
Bisbee, Ariz.....	608	112.5	37.61	58.66	92.5	30.43	44.13
Douglas, Ariz.....	623	112.5	36.11	52.37	95.	30.50	44.22
Tucson, Ariz.....	495	85.5	33.23	55.39	94.	27.66	40.16
Albuquerque, N. Mex.....	888	104.	23.42	33.96	104.	23.42	33.96
Deming, N. Mex.....	798	125.5	31.19	45.12	104.	23.77	41.79
El Paso, Tex.....	812	112.5	27.71	40.18	104.	23.62	37.14

Complainant shows that the commodity rates on fruits and vegetables in straight and mixed carloads to and from stations in California, Oregon, Nevada, Colorado, and other states are generally less than the class-C rates. The commodity rates cited range from 48.6 to 100 per cent of the corresponding class-C rates. It also shows that the maximum rate on fruits and vegetables in mixed carloads prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, commonly known as the *Shreveport Case*, as increased under general order No. 28, is 72.6 per cent of the corresponding class-C rate. The rates assailed average approximately 120 per cent of the class-C rates, and the earnings under the class-C rates would be high.

Complainant cited commodity rates on fruits and vegetables in mixed carloads moving intrastate in California which are considerably lower than class-C rates, and are on a much lower basis than the commodity rates assailed. For example, the rate from San Francisco to Los Angeles, 475 miles, is 31.5 cents, or 91.3 per cent of the class-C rate of 34.5 cents. This commodity rate produced ton-mile earnings of 13.26 mills. Defendants contend that the California local rates apply on a different character of traffic from that moving to Arizona points. They state that the local traffic in California moves in very heavy volume in stock cars, ventilated freight cars, or box cars, most of it being packed in lug boxes from the orchards and farms; that it moves principally to canning factories or into plants where it is sorted, graded, and packed for shipment to final markets; that the traffic to Arizona, on the other hand, is made up of selected fruits and vegetables in mixed carloads specially packed, moving in refrigerator cars, and that the volume of movement is relatively small. Complainant asserts that the California state rates are not restricted in their application to the class of traffic de-

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scribed by defendants, and contends that these rates are properly comparable with the rates assailed.

Defendants compared the rates assailed and their earnings with the rates on various commodities in common use moving between the same points. In computing the gross ton-mile revenues, the following factors were considered: Weight of average paying load, weight of car, allowance for empty haul westbound, and the percentage relationship of paying load to the total gross weight handled. It was testified that the empty refrigerator-car movement westbound passing through Yuma, Ariz., during 1919 was 86.11 per cent of the total westbound movement of refrigerator cars, and that from Bisbee and Douglas the empty movement is relatively higher. The gross ton-mile revenues thus computed are lower than those accruing on other commodities shown. Complainant contends that the abnormal movement westbound of empty refrigerator cars, as compared with other kinds of equipment, is due to a rule of their owners which requires the return of the cars empty unless a load is immediately available. The westbound movement of empty refrigerator cars through Yuma is 16 per cent greater than the eastbound movement of refrigerator cars both loaded and empty, a fact which has its bearing on the weight to be attached to defendants' computations.

In *Murray & Layne Co. v. S. P. Co.*, 59 I. C. C., 552, we found that the commodity rates on fruits and vegetables, in mixed carloads, from Los Angeles to Deming, N. Mex., were unreasonable to the extent that they exceeded 83 cents prior to June 25, 1918, and \$1.04 on and after that date, these being the class-C rates.

We find that the rates assailed were, are, and for the future will be unreasonable to the extent that they exceeded 83 cents per 100 pounds from San Francisco to Bisbee and Douglas, 74 cents per 100 pounds from Los Angeles to Bisbee, and 76 cents per 100 pounds from Los Angeles to Douglas during the period January 1, 1916, to June 24, 1918, inclusive; and \$1.04 per 100 pounds from San Francisco to Bisbee and Douglas, 92.5 cents per 100 pounds from Los Angeles to Bisbee, and 95 cents per 100 pounds from Los Angeles to Douglas thereafter, subject to the increases authorized by us on July 29, 1920. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

The allegation of undue prejudice is not sustained.

An appropriate order will be entered.

No. 11337.

ROLLING FORK OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY.

Submitted December 31, 1920. Decided May 5, 1921.

Rate on copra, in carloads, from Rolling Fork, Miss., to New Orleans, La., found unreasonable but not unduly prejudicial. Reparation awarded.

T. P. Goodwin for complainant.

John F. Finerty, A. P. Humburg, and Alex. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation manufacturing vegetable oils at Rolling Fork, Miss., alleges that the rate charged on nine carloads of copra shipped from Rolling Fork to New Orleans, La., in October and November, 1918, was unreasonable and unduly prejudicial. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments, aggregating 540,420 pounds, moved over the Yazoo & Mississippi Valley, hereinafter referred to as defendant, 278 miles. Charges of \$3,458.69 were collected at the applicable third-class any-quantity rate of 64 cents, governed by the southern classification.

Copra is the dried meat of the coconut, and is imported from the south Pacific islands. Its products, oil, cake, and meal, are used for the same purposes as the corresponding products of cotton seed, and come into direct competition therewith.

Prior to 1914 there was little or no movement of copra in this territory. On April 20, 1914, it was first listed in the southern classification, and was given an any-quantity rating of third class, that being the less-than-carload rating on dried fruit. On December 30, 1919, the fifth-class carload rating, applicable on dried fruit, and on February 20, 1920, the class-D rating, applicable on cotton seed, were 61 I. C. C.

made applicable on copra. When the shipments moved the class-D rate from Rolling Fork to New Orleans was 28 cents. At the same time the class-M rate of 20 cents applied on cotton seed under defendant's exceptions to the southern classification.

Complainant seeks reparation to the basis of the latter rate and compares the rate charged with rates contemporaneously in effect between various southern points, including rates of 26.5 and 31.5 cents to Atlanta, Ga., from Memphis, Tenn., 422 miles, and from Natchez, Miss., 512 miles, respectively. These were class-D rates governed by exceptions to the southern classification. Complainant also refers to interstate distance rates for 278 miles, published by defendant on various commodities, including 15.5 cents on pressed brick, 20 cents on ice, 28 cents on grain, 30 cents on bagging and ties, and 34 cents on canned meats.

Defendant's class-M rates are essentially commodity rates and said to be subnormal. They were established at a time when cotton seed was of little value and when water competition was active on the Mississippi River which parallels defendant's line. Commodity rates on copra are frequently higher than class D, but none is shown which is lower than the class-D basis in southern territory. No further movement from Rolling Fork is probable.

Complainant received \$160 per ton for the copra shipped. The value of cotton seed at that time was about \$70 per ton. The 64-cent rate yielded 4.6 cents per ton-mile and, computed on 60,046 pounds, the average loading of these shipments, 138.2 cents per car-mile. The class-D rate of 28 cents would have yielded 2 cents per ton-mile, and 60.5 cents per car-mile.

We find that the rate charged was not unduly prejudicial but that it was unreasonable to the extent that it exceeded 28 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,945.50, with interest.

An appropriate order will be entered.

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ILLINOIS NORTHERN RAILWAY.
SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-
CATION TERRITORY.

Submitted March 19, 1920. Decided March 24, 1921.

1. The Illinois Northern Railway found to be a common carrier, lawfully entitled to receive divisions of joint rates or absorptions of switching charges under appropriate tariffs from its trunk line connections, such divisions or absorptions to be reasonable.
2. Bases for payment by Illinois Northern Railway for use or detention of foreign cars on its line prescribed.

Samuel D. Snow and Clifford H. Browder for Illinois Northern Railway.

S. H. West and D. P. Connell for Director General of Railroads.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

The questions presented for consideration in this proceeding are (1) whether the Illinois Northern Railway, hereinafter called respondent, was and is a common carrier of property subject to the interstate commerce act, (2) the nature and extent of the services rendered to those using its facilities, and (3) whether it may lawfully receive divisions of joint rates or absorptions of switching charges out of through rates on interstate shipments to and from points on its line.

Respondent was incorporated May 16, 1901, under the general railroad incorporation laws of Illinois, with an authorized capital stock of \$500,000, all shares of which have been issued. There are no bonds or equipment obligations.

It is controlled by the International Harvester Company through the beneficial ownership of all shares of its capital stock except

the qualifying shares of the directors. The president, vice president, and treasurer of respondent are also officials of the industry, and devote only a part of their time to the business of respondent. The president receives a salary of \$1,440 and the vice president \$960 per annum. The treasurer receives no compensation from respondent. Its clerical force is paid in part by controlling or affiliated interests, but it has a separate operating force of 202 men, whose wages are approximately on the same basis as those paid by the trunk lines.

It owns 1.32 miles of main track and 7.89 miles of spur tracks and sidings in the city of Chicago, Ill., all standard gauge and laid with 75, 80, and 90 pound steel rails. In addition it has leased until 1952 the exclusive use of 4.29 miles of main track and 2.97 miles of spurs and sidings from the Atchison, Topeka & Santa Fe Railway Company, and has trackage rights over 1.34 miles of main track and 11.13 miles of spurs and sidings. It thus operates over a total of 28.94 miles of standard-gauge tracks and connects, either directly or by means of trackage rights, with the Indiana Harbor Belt Railway, the Belt Railway Company of Chicago, and a number of trunk lines. It owns 7 locomotives, 63 freight cars, and 1 company service car, and leases 1 locomotive. Its freight cars are interchanged with the trunk lines.

Respondent files annual reports and tariffs with us and keeps its accounts under our requirements. It also files tariffs with the Public Utilities Commission of Illinois. It issues bills of lading for shipments originating on its line. These are moved to the trunk lines on interline switching waybills and the trunk lines issue the through waybills. For plant and interplant service a switching ticket is used. Respondent's freight charges are collected from the connecting carrier except that on Chicago district business originating on its line the charges are prepaid by the shipper. It publishes less-than-carload rates but does no mail, express, or passenger business.

Respondent publishes demurrage tariffs and collects demurrage thereunder for its own account, settling with the trunk lines on a per diem and reclaim basis. Nineteen of the shippers served by respondent have executed with it average demurrage agreements. It is not a member of the American Railway Association, but is a subscriber to the per diem rules agreement of that association. In 1918 it paid per diem charges aggregating \$123,929.20 and received per diem reclaims to the amount of \$149,586.80 on the basis of an allowed detention period of five days. Since January 1, 1919, reclaim settlements have been made with the trunk lines on the basis of an actual average detention of 3.65 days.

In addition to the controlling industry respondent serves 38 independent shippers and receivers of freight, 26 of which are exclusively served by it. Thirty of the 38 have standard-gauge industrial tracks or sidings over which respondent operates for distances ranging from 68 feet to over 4 miles but for the use of which it pays no compensation. None of the industries served has either engines or equipment except the Crane Company, which operates one or two engines for spotting cars.

For the year ended December 31, 1918, approximately 60 per cent of the traffic and 61 per cent of the revenue were from other than the controlling or affiliated industries.

Operation of trunk line power and equipment is safe and practicable over respondent's line and such operation occurs daily. The Grand Trunk Western Railway moves approximately 9,000 cars per year over respondent's line under a trackage-right agreement.

Respondent has classification and storage yards, freight stations for incoming and outgoing freight, and five public team tracks, located outside the plant enclosure, on Twenty-sixth street, Thirty-first street, Western avenue, Central Park avenue, and Oakley avenue, from or over which 1,659 cars were handled in 1918.

The "book value" of the various classes of property, including materials and supplies, owned by respondent on December 31, 1918, is said to have been \$852,703.34. This "value" it is claimed represents the original cost of the property used in public service, including a leasehold account of \$204,835.75, less reserve for accrued depreciation, and no part of the plant facilities of the controlling industry is included. A valuation is now being made by us under section 19a of the act but has not yet been completed.

Respondent has not so kept its records as to separate its intrastate and interstate traffic, but from tests made for a month in 1918 and for 10 days in 1919 it was found that about 80 per cent of the interchange, overhead, and less-than-carload traffic was interstate.

The average haul from the various interchange points to or from the controlling or affiliated industries ranges from 0.59 mile to 4.74 miles, of which 0.42 mile and 4.07 miles, respectively, is over tracks of respondent; to or from independent industries 0.24 mile, wholly over respondent's tracks, to 6.98 miles, 4.13 miles of which is over its tracks; and to or from team tracks and freight stations 0.24 mile wholly over respondent's tracks, to 4.7 miles, 4.2 miles of which is over its tracks.

Respondent's interchange switching for the controlling industry does not differ from that performed for independent shippers or which would be performed by the trunk lines if they served the

controlling industry directly. Interchange with the trunk lines is generally made at junction points, but beyond in some instances, as in the Chicago switching district, it is the privilege of the receiving line to indicate where its connection shall make delivery.

Respondent's division for interchange service, collected from the trunk lines, is \$4.38 per car of 60,000 pounds and 12.5 cents per net ton or fraction thereof in excess of 60,000 pounds; except that in the case of coal the division is \$4.38 per car of 60,000 pounds, plus 12.5 cents per net ton or fraction thereof up to 70,000 pounds, when a flat division of \$5 per car is allowed, plus 10 cents per net ton in excess of 70,000 pounds, the latter excess being paid by the shipper. On less-than-carload traffic respondent receives 6.25 cents per 100 pounds.

Respondent's charges for performing an intermediate service between trunk lines are \$3 per loaded car, \$1.50 per empty car, \$2.50 per new empty car, and \$6.50 per coach, baggage, caboose, or sleeping car.

At the time of the hearing its published charge for local switching from, to, or between industries was \$4.50 per car of 60,000 pounds, plus 10 cents per net ton or fraction in excess thereof. On February 23, 1920, a charge of 1 cent per 100 pounds, minimum 60,000 pounds, became effective. On team tracks the rate is \$1 per car higher. It charges \$2.50 per car for plant and interplant switching regardless of weight.

On less-than-carload local traffic the charges are 6.5 cents per 100 pounds, minimum 50 cents per shipment; across-platform handling charges, \$1 per net ton. On trap cars between trunk lines and industries on its line respondent receives carload divisions. On movements in trap cars for industries on its line to respondent's freight house, in lots of 6,000 pounds or more, no charges are made, this being a common practice in the Chicago switching district on all roads, subject to certain minimum rates. If the lot is less than 6,000 pounds, the carload rate is charged.

It was testified that respondent's divisions are lower than those of the trunk lines for similar services and approximately the same as those of other industrial railroads.

In the past few years the cost of labor and materials has greatly increased and respondent has made wage increases corresponding to those of the trunk lines. The compensation of respondent was increased 25 per cent under general order No. 28 of the Director General of Railroads.

The following figures from income account are taken from the annual reports of respondent for 1917 and 1918 and from an exhibit for the first nine months of 1919:

Items.	1917	1918	Nine months in 1919.
Railway operating revenues.....	\$482,977.58	\$454,283.80	\$315,752.08
Railway operating expenses.....	879,654.13	624,163.98	299,007.19
Net revenue from railway operations.....	53,323.45	30,119.82	26,144.84
Railway tax accruals.....	10,579.67	9,786.16	7,892.55
Railway operating income.....	72,442.78	20,334.66	18,252.29
Total railway operating income.....	72,442.78	20,334.66	18,252.29
Hire of freight cars—Credit balance.....	46,111.45	25,657.60	959.54
Other nonoperating income.....	7,079.28	3,694.23	2,194.16
Total nonoperating income.....	53,190.73	29,351.83	3,157.70
Gross income.....	125,633.51	49,686.54	21,410.00
Deductions from gross income.....	119,293.29	99,046.97	66,822.24
Net income.....	6,340.22	¹ 48,590.43	¹ 45,448.26

¹ Deficits.

Exhibits were introduced purporting to show the cost of the service in 1918 and for the first nine months in 1919, apportioned between interchange and other switching on the engine-hour basis. This apportionment was based upon a formula apparently employed by the so-called Huddleston committee of railroad operating men and auditors, representatives of which in 1916 made a study of the time consumed in handling the intermill traffic, and concluded that 95.0421 per cent of the engine-hours were chargeable to interchange traffic, and the remainder to the intermill switching. It was testified that this percentage has since been tested several times by respondent and found to be as nearly correct as could be determined; but it does not appear whether the percentages so used were based upon the total number of engine-hours for all services and including idle time or otherwise. The above percentage was taken as representing the engine-hours chargeable to interchange in 1918 and 1919 and in arriving at the cost per car for those two years. The cost of interchange, including 6 per cent interest on the book value of the property used in that service, taxes, and rentals, is shown as \$6.88 per car in 1918 and \$7.68 per car in 1919. It was testified that the Huddleston committee had determined that respondent was entitled to about \$5 per car in 1916 for the interchange service.

In *Chicago, West Pullman & Southern R. R. Co. Case*, 37 I. C. C., 408, we said that in making a general separation of the expenses chargeable to interchange and interior plant switching the engine-
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hour will usually be found a safer guide than cars handled. The method used by respondent, while based upon engine-hours, is unsatisfactory in that it represents what amounts to an arbitrary division without other attempt at verification than short test periods, and perhaps includes idle time and services other than those performed for the trunk lines. The cost of the interchange traffic in 1918 has been computed on the basis of 75,824 cars. Overhead switching between the trunk lines to the extent of 13,547 cars is included in that number. The local switching and plant and intraplant movements totaled 9,597 cars, or about 11 per cent of all cars switched. The total cost of operation for 1918, including interest on the book value of the property, taxes, and rentals is given as \$549,146.01. Deducting \$521,919.90 as the amount chargeable to interchange leaves a balance of \$27,226.11, approximately 5 per cent of the total cost of operation, as the amount chargeable to plant, intraplant, and local switching. Eliminating the cars included under "wheelage" the average cost per car would be \$2.83 as against respondent's published charge of \$2.50 for plant and interplant switching. This suggests the inquiry whether these classes of service are charged their fair share of the operating expenses and other classes more than their fair share. It is stated that the less-than-carload interchange or the overhead switching cost could not be separately allocated. It is also observed that there has been no attempt to make a segregation as between interstate and intrastate traffic.

It is apparent from the record that operating costs have greatly increased since 1914 and that respondent is entitled to some increase in its charges for the interchange traffic. Its deficit for 1918 was over \$46,000 and for the first nine months of 1919 over \$45,000. On the other hand, the data of record are not complete enough to determine with any reasonable degree of certainty the maximum divisions or charges that may lawfully be paid or absorbed by the trunk lines on interstate traffic handled by respondent.

We have in former cases pointed out that the payment of per diem reclaims to industrial railroads may result in preferences and advantages to the proprietary industries. Upon consideration of the record we find in accordance with our holding in *Birmingham Southern R. R. Co. v. Director General*, 61 I. C. C., 551, that the per diem agreement is not a proper basis for settlement by an industrial railway for the use or detention upon its lines of foreign cars.

We further find that the respondent was and is a common carrier of property subject to the interstate commerce act and may lawfully receive from its trunk line connections divisions of joint rates or absorptions of its switching charges under appropriate tariff provisions, such divisions or absorptions to be reasonable. A complete

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and specific statement of any basis agreed upon between respondent and the trunk lines should be filed with us immediately upon its adoption.

We further find that the following arrangement between respondent and its trunk line connections with respect to the detention of foreign cars on the line of the former will be reasonable and proper for the future.

The Illinois Northern Railway and the defendant trunk lines connecting with the Illinois Northern Railway shall establish rules in accordance with the provisions of appendix C of the United States Railroad Administration's circular CS-59 providing for assessment of charges for use and detention of cars except those at home on the tracks of the Illinois Northern or the industries located thereon against the Illinois Northern Railway at the contemporaneous demurrage rates on cars delivered loaded and returned empty or delivered empty and returned loaded after the expiration of 72 hours' free time; for the similar assessment of charges for use and detention of cars at the contemporaneous demurrage rates on cars delivered loaded and returned loaded after 144 hours' free time; and for the like assessment of charges for use and detention of cars on cars delivered empty and returned empty after 24 hours' free time. Time shall be computed from the first 7 a. m. after actual placement on the interchange track until returned to a recognized interchange track; except that when, through no fault of the delivering line, such placement can not be made upon the interchange track, time shall be computed from the first 7 a. m. after notice of readiness to deliver such car has been sent or given to the industrial carrier, such notice to contain a statement of point of shipment, car initials and numbers, car contents, consignee, and if transferred in transit the initials and number of the original car. Sundays and legal holidays, but not half holidays, shall be excluded except as hereinafter stated. On cars delivered loaded and returned empty and on cars delivered empty and returned loaded one credit shall be allowed for each car returned within the first 48 hours of free time; after the expiration of 72 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first four days; in no case shall more than one credit be allowed on any one car and in no case shall more than four credits be applied in cancellation of debits accruing on any one car. On cars delivered loaded and returned loaded two credits shall be allowed for each car returned within the first 96 hours of free time, one credit shall be allowed for each car returned within the first 120 hours' free time; after the expiration of 144 hours' free time, one debit per car per day or fraction of a day shall be charged for each of the first eight days; in no case shall more than two credits

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be allowed accruing on any one car, nor more than eight credits be applied in cancellation of debits accruing on any one car. After a car has accrued the debits named, charges for use and detention of cars at the contemporaneous demurrage rates shall be collected for each succeeding day or fraction of a day, including all subsequent Sundays and legal holidays. At the end of the calendar month the total credits shall be deducted from the total debits and charges for use and detention of cars at the contemporaneous demurrage rates per debit charged for the remainder. If the credits equal or exceed the debits, no charge or payment shall be made on account of such excess credits, nor shall credits in excess of the debits of any one month be considered in computing the average detention for another month. On cars delivered empty and returned empty, charges for use and detention of cars at the contemporaneous demurrage rates per car per day or fraction of a day shall be collected, after the expiration of 24 hours' free time.

Under this arrangement shippers located on the Illinois Northern would be accorded the same treatment in the matter of demurrage as those located on the lines of other common carriers, and the Illinois Northern would be enabled to execute average demurrage agreements with industries served by it under circumstances similar to those which control the making of such agreements between other lines and the industries served by them.

An appropriate order will be entered in No. 4181. No order is necessary in Investigation and Suspension Docket No. 414.

HALL and MITCHISON, *Commissioners*, dissent.

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PULLMAN RAILROAD COMPANY.
SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-
CATION TERRITORY.

Submitted August 28, 1919. Decided March 24, 1921.

1. Pullman Railroad Company found to be a common carrier of property subject to the interstate commerce act which may lawfully participate in joint rates with other common carriers, or have its charges on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation must not be more than is reasonable; and a complete and specific statement of any basis agreed upon must be filed with the Commission immediately upon its adoption.
2. Rules for car interchange arrangements between the Pullman Railroad Company and its trunk line connections and basis of settlement for accrued charges suggested.

G. S. Fernald for Pullman Railroad Company.

William W. Collin, jr., for New York Central lines.

James Stillwell for Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

The portion of this proceeding now before us presents the question whether the Pullman Railroad Company, hereinafter called the Pullman Railroad, respondent herein, is a common carrier which may lawfully receive compensation from its trunk line connections in the form of divisions of joint rates or absorptions of its switching charges out of through rates on interstate shipments to and from points on its lines.

The Pullman Railroad's response to a questionnaire addressed to it by us on May 29, 1919, giving additional information as to changes since January 1, 1914, in physical properties, manner of
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operation, and pertinent matters was, with its consent and that of its trunk line connections, made a part of the record.

The Pullman Railroad is a switching road, incorporated August 25, 1906, under the general railroad incorporation laws of Illinois and operates in Chicago and Pullman, Ill. It has an authorized capital stock of \$500,000, shares of which aggregating \$175,000 in par value were issued for cash, \$125,000 for purchase of locomotives and cars, and \$200,000 as "a further consideration" for lease of right of way and use of tracks of the Pullman Company, for which it had theretofore paid \$7,000 per annum. It owns 6.21 miles of main track and 6.719 miles of spur track and sidings, and leases from the Pullman Company 3.03 miles of main track and 5.596 miles of spur track and sidings, all standard gauge. The leased tracks extend from One hundred and fourth street to One hundred and fifteenth street in the city of Chicago, and most of them are within the plant inclosure of the Pullman Company. All of the tracks owned by the Pullman Railroad are outside of the plant. The main line owned consists of two separate sections, one extending to Ninety-fifth street from the north end of the Pullman Company's property at One hundred and fourth street and the other extending from the south end of the property at One hundred and fifteenth street to One hundred and thirtieth street. These two sections are connected by means of its leased tracks within the plant inclosure. Yard tracks and sidings in and about the various plants of the Pullman Company aggregate about 75 miles, and these plant tracks are used by the Pullman Railroad in placing cars at the various loading and unloading points within the plant inclosure.

The Pullman Railroad has direct track connection at the north end of its line with the Chicago, Rock Island & Pacific, New York, Chicago & St. Louis, Belt Railroad of Chicago, Chicago & Western Indiana, and Chicago, West Pullman & Southern, and at the south end with the Illinois Central, Chicago, Lake Shore & South Bend, and Michigan Central. Equipment owned and operated by it consists of 6 locomotives and 158 freight cars, none of which is interchanged with connecting carriers. The tracks of the Pullman Railroad are in such condition as to make operation of trunk line power over them safe and practicable, and trunk line engines enter the interchange yards of respondent.

It files tariffs and annual reports with us and its accounts are kept under our requirements. It publishes no rates for transportation of freight in less-than-carload quantities and does no passenger, mail, or express business. It issues bills of lading and moves cars to connecting trunk lines on transfer switching slips from which the

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agents of the connecting lines make out through waybills. No pre-paid charges are collected by it on cars destined beyond the Chicago switching district.

The Pullman Railroad has its own demurrage tariffs and collects demurrage for itself from industries served, settling with its trunk line connections in accordance with the per diem rules of the American Railway Association, of which it is a member. During the calendar year 1918 an aggregate of \$66,749.25 was so paid to the owners of cars for the detention of cars, while per diem reclaims received from its trunk line connections during the same period, based on an allowed detention period of five days, amounted to \$57,368.75. This detention period was reduced January 1, 1919, to 3.61 days. Thirteen of the industries served by the Pullman Railroad have executed the average agreement with it, the remaining industries being on a straight demurrage basis.

The Pullman Company, a manufacturer of railroad cars, located in the Pullman and Kensington districts of Chicago, west of Lake Calumet, controls the Pullman Railroad through ownership of all but seven shares of its capital stock. The president and vice president of the Pullman Railroad also occupy positions with the Pullman Company, the former receiving no salary from the Pullman Railroad and the latter receiving \$3,500 from the railroad and \$2,500 from the Pullman Company. Separate accounts are kept by the Pullman Railroad.

The Pullman Railroad serves, in addition to the controlling industry, 18 independent shippers and receivers of carload freight located along its line, all having private sidings, over which it operates without compensating the industries. In the car-works plant of the Pullman Company there are approximately 25 miles of standard-gauge sidings, over which the plant operates 5 small locomotives and 34 cars, the cars being leased from the Pullman Railroad on the basis of 6 per cent of the book value of the investment. These industrial tracks are not carrier property, and the work done is entirely a plant service, for which the industry does not ask or receive compensation.

There are two public team tracks on the line of the Pullman Railroad, one at One hundred and third street and the other at One hundred and fifteenth street, and 107 cars were handled in interchange service from these tracks during 1918.

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An analysis of traffic and revenue for the year 1918 is given below.

Revenue services.	Number of cars.	Amount of revenue.
Interchange service:		
Between plants of controlling industry and junctions with connecting carriers.	17,030	\$54,636.10
Between independent industries and junctions with connecting carriers.....	21,911	71,276.88
Between team tracks or freight stations and junctions with connecting carriers.....	107	381.00
Total interchange service.....	¹ 39,048	126,293.48
Plant and interplant service:		
For controlling industry.....	5,256	10,254.41
For independent industries.....	6,216	10,671.04
Total plant and interplant service.....	11,472	20,925.45
Local switching:		
Between plants of controlling or affiliated industries and other industries, team tracks, or stations.....	1,408	\$,399.02
Between independent industries.....	787	4,395.48
Total local switching.....	2,195	12,691.48
Other revenue service:		
Cars (10,923) weighed for controlling industry.....		7,000.00
Cars (2,653) weighed for public.....		1,711.50
Grand total, all services.....	52,715	166,621.88

¹ It is estimated that about 45 per cent to 50 per cent of the cars handled in interchange service are intrastate, and the balance interstate.

The average length of haul between plants of controlling or affiliated industries and junctions with connecting carriers or other interchange points is given as 2.97 miles, of which 0.5 mile is over industrial tracks, 2.18 miles over Pullman Railroad's tracks, and 0.29 mile over trunk line tracks; between independent industries and junctions with connecting carriers or team tracks, 2.87 miles, of which 0.1 mile is over the tracks of the industry, 2.48 miles over tracks of the Pullman Railroad, and 0.29 mile over tracks of connecting trunk line; between team tracks and junctions with connecting carriers or other interchange points 2.87 miles, 2.58 miles over Pullman Railroad tracks, and 0.29 mile over trunk line tracks. It is stated that the above figures do not represent the average service haul for any given period, but only the average distance one car might be handled; that 63 per cent of the cars interchanged are handled via the Belt Railway Company of Chicago at Pullman Junction between which interchange point and the controlling industry and independent industries or team tracks the average length of haul is 3.62 and 3.87 miles, respectively; and that the average service hauls of the Pullman Railroad are 3.35 miles and 3.24 miles, respectively.

Trunk lines set incoming cars for the Pullman Railroad in the latter's interchange yards at Pullman Junction and Kensington Transfer, while outgoing cars are delivered to trunk line connections in their interchange yards. For the interchange of cars with the

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Michigan Central and Illinois Central, the Pullman Railroad has assigned for their exclusive use two tracks maintained by it at the Kensington yard upon which they deliver and receive cars.

The interchange service performed by respondent is done as an operating matter on a daily schedule and the service performed for the controlling industry is similar in manner and extent to that performed for independent shippers and receivers and is the same as would be performed if they were served directly by the trunk lines.

The Pullman Railroad makes no charge in addition to the trunk line rate for interchange switching to and from the industries located on its lines, as it is customary to apply the Chicago rates on all interstate carload traffic. It formerly received out of the trunk line rate \$3 per car, but this amount was increased June 25, 1918, to \$3.75 per car. In addition the trunk lines absorb \$1.25 and \$2.50 per car for freight and passenger equipment, respectively, and \$6.25 for each locomotive and steam crane.

For movement between the different plants on its line the respondent charges \$2 per car, and where an industry desires the assignment of an engine and crew for switching within the plant inclosure the rate is \$8.50 per hour. Its tariffs also provide a charge for local switching of 1 cent per 100 pounds, minimum weight 60,000 pounds, on all freight except coal and coke, on which the rate is 10 cents per ton, minimum 30 tons; \$2 for new or old freight cars empty; \$5 for passenger equipment empty; and \$10 for cranes, locomotives, etc., on their own wheels. For switching between trunk lines a charge of \$3.50, formerly \$2.50, is made for carload freight and \$2, formerly \$1.50, for empty freight cars. The increased charges became effective on February 4, 1920.

The Pullman Railroad shows a "book value" of \$586,676.63 for property used in the public service, distributed as follows:

Road	\$211, 919. 21
Leasehold	188, 720. 35
Equipment	152, 847. 85
Improvements on leased railway property.....	2, 802. 27
Materials and supplies.....	29, 342. 62
Insurance paid in advance.....	1, 044. 83
Total.....	586, 676. 63

The "values" claimed are stated to be based on original cost. After deducting \$82,668.15 reserved for accrued depreciation on equipment the present book value is stated as \$504,008.48. A valuation of the Pullman Railroad's property is being made by us, but no report has been adopted.

A comparison of operating costs for 1918 is made with those for 1914. The total operating expenses for 1918 plus taxes and 6 per
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cent interest on investment are given as \$227,159.12 as contrasted with \$140,551.36 for 1914. In apportioning common expenses and the interest on the value of the Pullman Railroad's property used in the different classes of switching the allocation purports to be made on the engine-hour basis, and apparently it was assumed that the number of engine-hours and the number of cars handled in the various classes of service were the same in 1918 as in 1914.

In stating the "property investment" for 1918 an item for "leasehold," \$188,720.35, is included. It is not clearly shown what this represents. If it is the value of the property leased, the reasons for including it in the property investment are not explained. The cost study is far from clear.

The figures below are taken from the income account for the years specified, as shown in the Pullman Railroad's annual reports to us:

Items.	1916	1917	1918
Railway operating revenues.....	\$151,916.17	\$180,070.16	\$259,394.27
Railway operating expenses.....	96,038.30	127,749.53	169,713.28
Net revenue from railway operations.....	55,877.87	52,320.63	90,150.99
Railway tax accruals.....	15,460.18	18,470.78	17,987.96
Uncollectible railway revenues.....		23.25	
Railway operating income.....	38,417.69	33,834.60	72,163.04
Total operating income.....	38,417.69	33,834.60	72,163.04
Hire of freight cars—Credit balance.....	3,055.91		
Rent from locomotives.....	15.62		3.33
Miscellaneous rent income.....	727.35	825.00	840.00
Income from funded securities.....	11,731.25	14,394.73	15,613.33
Income from unfunded securities and accounts.....	618.64	479.45	821.89
Total nonoperating income.....	16,138.77	15,699.18	17,278.55
Gross income.....	54,556.46	49,533.78	89,441.59
Hire of freight cars—Debit balance.....		769.99	8,326.99
Other deductions from gross income.....	9,224.61	9,522.46	9,392.58
Total deductions.....	9,224.61	10,292.45	17,620.57
Net income.....	45,331.85	39,241.33	71,812.02
Income balance transferred to profit and loss.....	45,331.85	39,241.33	71,812.02

The comparatively large income for 1918 is largely due to the collection of \$90,403 in demurrage during this period. In addition the Pullman Railroad received \$57,368.75 in reclaims. During this time it paid trunk lines the sum of \$66,749.25 under the per diem rules, leaving a net return of \$81,022.50 for cars detained on its lines during 1918.

Upon the record we find that Pullman Railroad Company is a common carrier of property subject to the interstate commerce act which may lawfully receive from its trunk line connections divisions of joint rates, or absorptions of its switching charges under appropriate tariffs, such divisions or absorptions to be reasonable. This

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record does not afford a basis for a finding as to what would be reasonable divisions or absorptions. A complete and specific statement of any basis agreed upon must be filed with us immediately upon its adoption.

Before the institution of this proceeding the Michigan Central Railroad Company and the Pullman Railroad Company jointly submitted to us the question of the settlement which properly may be made for demurrage alleged by the Michigan Central to have accrued for the detention on the Pullman Railroad of cars delivered to it by the Michigan Central for industries on the respondent's line between March 1, 1910, and September 12, 1912. The parties were advised that in our opinion the demurrage was properly assessed and chargeable against the Pullman Railroad and that there was no basis for the retroactive application of the per diem agreement. Later, upon request for reconsideration, we agreed to consider the whole matter of demurrage charges against the Pullman Railroad by the Michigan Central as well as other connecting carriers in connection with this proceeding. At the hearing counsel for the Pullman Railroad was offered the opportunity of submitting evidence thereon, but he stated that all the essential facts were then before us in the form of signed statements. The situation disclosed in these statements and in the supplemental brief of the Pullman Railroad on the demurrage question, of record in this proceeding, is as follows:

Prior to March 1, 1910, cars were interchanged with the trunk lines under the demurrage rules in effect and the Pullman Railroad was allowed two days for switching in and out and two days each for loading and unloading, a total allowance of four days' free time on cars moving loaded one way and six days on cars moving loaded both ways. From March 1, 1910, to September 12, 1912, cars were interchanged with the connecting trunk lines under the same rules, except that no free-time allowance was made for switching the cars to and from the points of loading or unloading. During that period the Pullman Railroad collected demurrage from shippers and consignees in accordance with the uniform demurrage code. On September 12, 1912, the Pullman Railroad became a party to the per diem rules agreement, and since that date it has interchanged cars with connecting trunk lines on the per diem basis.

From March 1, 1910, to September 12, 1912, there were 65,133 cars switched by the Pullman Railroad between the rails of connecting carriers and the industries or team tracks served, of which 35,503 cars, or 54.5 per cent, were for the Pullman Company and 29,630 cars, or 45.5 per cent, were for other industries. Demurrage accrued on 27,194 of these cars. The demurrage assessed thereon by the trunk lines against the Pullman Railroad aggregated \$55,765,

which amount remains unpaid. The demurrage collected by the Pullman Railroad from its shippers and consignees on the same cars aggregated \$29,692, of which \$24,080, or 81.1 per cent, was from the Pullman Company and the balance from other industries. The total amount of demurrage assessed by the Michigan Central against the Pullman Railroad on cars received from the former during the above period amounted to \$12,265, and the amount of demurrage collected by the Pullman Railroad from consignors or consignees on the same cars amounted to \$4,748. When the matter was originally presented to us the Michigan Central expressed willingness to settle upon the basis of the per diem rule and reclaim arrangement now in effect. The views of the other trunk lines in this respect are not of record. The Pullman Railroad expressed willingness to pay over to the connecting trunk lines all of the demurrage it has collected on the cars in question.

We have in former cases pointed out that the payment of per diem reclaims to industrial roads may result in preferences and advantages to the proprietary industries. Upon the record we find, in accordance with our holding in *Birmingham Southern R. R. Co. v. Director General*, 61 I. C. C., 551, that the per diem agreement is not a proper basis for settlement by an industrial railway for the use or detention upon its line of foreign cars, and that the following arrangement is a reasonable and proper basis for car interchange between the Pullman Railroad and its trunk line connections: The Pullman Railroad and the defendant trunk lines connecting with the Pullman Railroad shall establish rules in accordance with the provisions of appendix C of the United States Railroad Administration's circular CS-59, providing for assessment of charges for use and detention of cars except those at home on the tracks of the Pullman Railroad or the industries located thereon against the Pullman Railroad at the contemporaneous demurrage rates on cars delivered loaded and returned empty or delivered empty and returned loaded after the expiration of 72 hours free time; for the similar assessment of charges for use and detention of cars at the contemporaneous demurrage rates on cars delivered loaded and returned loaded after 144 hours' free time; and for the like assessment of charges for use and detention of cars on cars delivered empty and returned empty after 24 hours' free time. Time shall be computed from the first 7 a. m. after actual placement on the interchange track until returned to a recognized interchange track, except that when, through no fault of the delivering line such placement can not be made upon the interchange track, time shall be computed from the first 7 a. m. after notice of readiness to deliver such car has been sent or given to the industrial carrier, such notice to contain a statement of point of

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shipment, car initials and numbers, car contents, consignee, and if transferred in transit the initials and number of the original car. Sundays and legal holidays, but not half holidays, shall be excluded, except as hereinafter stated. On cars delivered loaded and returned empty and on cars delivered empty and returned loaded one credit shall be allowed for each car returned within the first 48 hours of free time; after the expiration of 72 hours' free time one debit per car per day, or fraction of a day, shall be charged for each of the first four days; in no case shall more than one credit be allowed on any one car, and in no case shall more than four credits be applied in cancellation of debits accruing on any one car. On cars delivered loaded and returned loaded two credits shall be allowed for each car returned within the first 96 hours of free time, one credit shall be allowed for each car returned within the first 120 hours' free time; after the expiration of 144 hours' free time one debit per car per day, or fraction of a day, shall be charged for each of the first eight days; in no case shall more than two credits be allowed accruing on any one car nor more than eight credits be applied in cancellation of debits accruing on any one car. After a car has accrued the debits named charges for use and detention of cars at the contemporaneous demurrage rates shall be collected for each succeeding day, or fraction of a day, including all subsequent Sundays and legal holidays. At the end of the calendar month the total credits shall be deducted from the total debits and charges for use and detention of cars at the contemporaneous demurrage rates per debit charged for the remainder. If the credits equal or exceed the debits, no charge or payment shall be made on account of such excess credits, nor shall credits in excess of the debits of any one month be considered in computing the average detention for another month. On cars delivered empty and returned empty charges for use and detention of cars at the current demurrage rates per car per day, or fraction of a day, shall be collected after the expiration of 24 hours' free time.

Under this arrangement shippers located on the Pullman Railroad will be accorded the same treatment in the matter of demurrage as those located on the trunk lines, and the Pullman Railroad will be enabled to execute average demurrage agreements with industries served by it under circumstances similar to those which control the making of such agreements between trunk lines and industries served by them.

There remains for consideration the question of the proper settlement that may be made between the Pullman Railroad and its trunk line connections for accrued demurrage charged by the latter against the former during the period from March 1, 1910, to September 12, 1912. We are of the opinion that adjustment of the charges in ques-

tion upon the basis set forth above would be reasonable and proper, and the parties are hereby authorized to make settlement in accordance therewith.

An appropriate order will be entered in No. 4181. No order is necessary in Investigation and Suspension Docket No. 414.

HALL and AITCHISON, *Commissioners*, dissent.

INVESTIGATION AND SUSPENSION DOCKET No. 1272.

SWITCHING AND ABSORPTION AT MINNEAPOLIS,
MINN., ETC.

Submitted April 8, 1921. Decided May 10, 1921.

1. Proposed increased charges of the Minneapolis & St. Louis Railroad and Railway Transfer Company for switching interstate carload shipments at Minneapolis, St. Louis Park, and Hopkins, Minn., found not justified.
2. Proposed limitation on the amount of the switching charges of the above lines that will be absorbed by the Chicago, St. Paul, Minneapolis & Omaha Railway and Minneapolis, St. Paul & Sault Ste. Marie Railway found not justified.
3. Suspended schedules ordered canceled without prejudice to the publication of schedules in conformity with the findings herein.

F. B. Townsend and *M. M. Joyce* for Minneapolis & St. Louis Railroad Company and Railway Transfer Company of City of Minneapolis; *R. L. Kennedy* and *G. C. Wright* for Chicago, St. Paul, Minneapolis & Omaha Railway Company; and *Albert H. Lasso* and *J. H. Rees* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company, respondents.

Fred W. Putnam, *D. F. Jurgensen* and *A. L. Flinn* for Minnesota Railroad and Warehouse Commission; *H. G. Simpson* and *W. P. Trickett* for Minneapolis Traffic Association, Washburn-Crosby Company, and Northwestern Consolidated Milling Company; *O. W. Tong* for Northern Potato Traffic Association; *L. D. Velum* for Northwestern Consolidated Milling Company; *M. H. Strothman* and *C. C. Crellin* for Washburn-Crosby Company; *F. M. Norton* for Pacific Elevator Company; *Herman Miller* and *E. H. Berg* for St. Paul Association of Public and Business Affairs; and *Carl F. Miller* for Midway Club, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to become effective January 1 and February 5, 1921, the Minneapolis & St. Louis and the Railway Transfer Company of the City of Minneapolis, hereinafter called the M. & St. L. and the Railway Transfer, respectively, and collectively termed respondents, propose to increase their charges for switching interstate carload shipments at Minneapolis, St. Louis Park, and Hopkins, Minn. By schedules filed to become effective January 9 and 10 and March 25, 1921, the Chicago, St. Paul, Minneapolis & Omaha and the Minneapolis, St. Paul & Sault Ste. Marie, hereinafter called the Omaha and Soo line, respectively, propose to limit their absorption of respondents' switching charges at Minneapolis, St. Louis Park, and Hopkins to amounts equal to the present charges. Under the latter schedules, the increases in respondents' charges must be paid by the shipper or the receiver of freight. Upon protest by the Minnesota Railroad and Warehouse Commission, hereinafter termed the Minnesota commission, the Minneapolis Traffic Association, and various shippers and receivers of freight at Minneapolis, the operation upon interstate traffic of the schedules mentioned was suspended until July 23 and May 31, 1921, respectively. Except as otherwise indicated switching charges will be stated in amounts per car.

The Railway Transfer is a subsidiary of the M. & St. L., and operates certain tracks, locomotives, and other property of the latter company under a lease. These carriers have been treated by the Minnesota commission as one for rate-making purposes. Minneapolis is the principal terminal of the M. & St. L. St. Louis Park and Hopkins are villages 5 and 8 miles, respectively, southwest of Minneapolis. Respondents' terminal extends from Twentieth avenue, south, in Minneapolis through St. Louis Park to Hopkins, a total distance of 10.25 miles, 6.78 miles thereof within the Minneapolis switching district and 3.47 miles in St. Louis Park and Hopkins. The Railway Transfer operates in the milling district of Minneapolis between Twentieth avenue, south, and First street, north, 1.58 miles. It serves seven large flour mills having a capacity equal to approximately one-half that of all the mills in Minneapolis. It also serves five elevators and four other industries. The distances between industries on the Railway Transfer and the interchange tracks with its connections or the connections of the M. & St. L. range from 720 feet to approximately 6 miles. The M. & St. L. serves five elevators and 67 other industries. The distance between industries on that line and interchange tracks with connecting lines ranges from 840 feet to approximately 7 miles. The average distance is not stated.

The present charges of respondents for switching between industries in Minneapolis and interchange tracks, and for intermediate switching between connecting lines in that city, are in most instances \$2, and, in some instances, \$2.50. The charge for switching between industries and interchange tracks in St. Louis Park and in Hopkins is \$4. The proposed charge for switching between industries in Minneapolis and interchange tracks is \$8, except that on shipments in tank cars it is \$10, and on grain and grain products, \$6. A large proportion of the shipments switched consist of the latter commodities, for which the charge for many years has been the same as that for intermediate switching. The movement is heavy and involves little or no handling of empty cars. The charge proposed for intermediate switching is \$5, except that on shipments in tank cars it is \$6. The proposed charge for switching between industries and interchange tracks at St. Louis Park and at Hopkins is \$8, except that on shipments in tank cars it is \$10. Respondents also propose to increase switching charges on certain commodities between industries at St. Louis Park and Hopkins and interchange tracks at Minneapolis, but these charges apply chiefly in connection with intrastate shipments. The present charges for this service are in excess of \$6 per car. Various other intrastate charges are published in the suspended schedules, but our consideration of increased charges will be confined to those applicable on interstate movements. At present the Soo line, Great Northern, and Northern Pacific generally absorb the switching charges of connecting lines on competitive traffic, and the Omaha and other trunk lines generally absorb such charges on all traffic. The conditions vary, however, with different lines. The switching charges on inbound grain from points other than on the Missouri River are not absorbed, and any increase therein must be borne by the shipper or receiver of freight.

For many years prior to January, 1917, respondents maintained a charge of \$1.50 for intermediate switching, and for switching between industries and interchange tracks at Minneapolis. In January, 1917, and later, they established a charge of \$3 for intermediate switching by the M. & St. L., and a charge of 1 cent per 100 pounds, minimum \$6 per car, for switching between interchange tracks and industries at Minneapolis, when absorbed by line-haul carriers. The charges for the same switching, when paid by the shipper, remained unchanged. Consequently no increase was made for switching inbound shipments of grain. By schedules to become effective April 23, 1917, it was proposed to establish a charge of \$3 for intermediate switching by the Railway Transfer. The increases theretofore made and those proposed, as well as those of certain other lines in Minneapolis, were considered in *Switching Absorptions*, 47

I. C. C., 583. In that case it appeared that the switching charges had been in effect for many years and did not reflect the increases meantime in the average loading of cars or in the cost of service; that they were materially lower than the charges imposed at other points where the conditions were fairly comparable with those at Minneapolis; and that they might properly be increased to some extent, but we found that the record did not afford justification for the increased charges or the proposed increased charges. At pages 587 and 588 we said, respecting respondents:

Neither of these carriers offered any evidence concerning the cost of service nor furnished other information which would enable us to determine that the increased charge is reasonable.

The increases there considered were not so great as those here proposed. General order No. 28 of the Director General of Railroads did not provide for an increase in these charges, and there has been no subsequent change in them other than the general increase authorized by us on July 29, 1920.

In the present proceeding respondents seek to justify the proposed increased charges, in part, at least, by evidence relating to the cost of service. Their cost accountant endeavored to show the average cost of switching all loaded cars handled by respondents in their Minneapolis terminal during the week ended January 30, 1921. This was done in the following manner:

The total cost of operating the Railway Transfer in 1920, including the rental of the property leased from the M. & St. L., was \$418,960.64. This was divided by the total number of hours worked by its switching engines during that year, producing \$34.13, the cost per hour of switch-engine service. The cost per hour of switching service classed as useful was increased to \$38.98 by charging to such service the time during which the engines were employed in service not classed as useful. The cost so ascertained was applied to the total time consumed in switching operations during the test week and divided by the number of cars handled in each operation to show the unit cost per car of each operation. The unit cost was applied to the different operations in complete switching movements during the test week, and showed an average cost per loaded car of \$5.79 for switching between industries and connecting lines and \$5.14 for intermediate switching.

The total operating expenses of the M. & St. L. were apportioned between its Minneapolis terminal and the rest of its line substantially as follows: (1) The total expenses for 1920 under the maintenance of way and structures and maintenance of equipment accounts were generally apportioned on the basis of ratios determined by an examination made in 1917 of the accounts, vouchers, and pay rolls for the
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months of April and October, 1916, and an allotment was made therefrom by respondents' accountant; (2) most of the transportation accounts were apportioned from an examination of the accounts, vouchers, and pay rolls for the test week; and (3) general expenses apparently were apportioned in accordance with the ratios ascertained as above for the maintenance of way and structures and maintenance of equipment accounts. The total operating expenses allotted to the Minneapolis terminal for the year 1920 were multiplied by 7/365, and the resulting amount, \$25,437.81, was taken as the operating expenses for the test week.

The terminal expenses for one week were divided by the total number of hours worked by the M. & St. L. switch engines, producing \$28.63, the average cost per hour of switch-engine service. The cost per hour of useful service was increased to \$35.60 by deducting the expense of certain movements not connected with switching services and then allotting the expense of certain nonuseful switching to the useful switching service. The latter cost per hour was applied to the time consumed in switching operations during the test week, as in the case of the Railway Transfer, to show the unit cost per car of each operation. The unit cost was applied to the operations constituting complete switching movements of different classes, and the cost of handling cars not directly accounted for, including empty cars, was apportioned to the loaded cars, resulting in an average cost for interchange switching of \$13.44 per loaded car. This average cost was increased to \$16.66 by the addition of certain amounts for return on investment, arrived at in the following manner: For the Minneapolis terminal the total tax accruals and the return on investment, the latter figured at 6 per cent on a valuation of \$4,686,578.37, were 2.72 per cent and 21.20 per cent, respectively, of the total operating expenses. These respective percentages were applied to the average cost of \$13.44 per loaded car to ascertain the tax accruals and return on investment per car.

According to respondents' figures, 232 loaded cars were interchanged by the M. & St. L. with connecting lines at an average cost of \$16.66; 68 loaded cars were interchanged by it with the Railway Transfer as an intermediate line at an average cost of \$21.80 per car; and 1,106 loaded cars were interchanged by the Railway Transfer with connecting lines other than the M. & St. L. at an average cost of \$5.79 per car. Dividing the total cost of these movements by the total number of loaded cars handled results in an average cost of \$8.36 per loaded car for respondents' interchange service during the test week.

Protestants criticize respondents' cost figures in many particulars, including the following:

A period of depression in railroad traffic existed for some time prior to and during the test week. The M. & St. L. forwarded more cars from Minneapolis in line-haul service during January, 1921, than the average per month in 1920, but the switching charges in question apply on shipments interchanged with other lines, and the total number of loaded cars handled by all lines at Minneapolis in January, 1921, was substantially less than during the corresponding month of the four preceding years. Due to the smaller number of cars switched, the average costs per car during the test week were undoubtedly higher than normal average costs.

The lease executed by respondents on November 2, 1904, provided an annual rental of \$60,000 and \$100 per month additional for each engine used by the Railway Transfer. The present annual rental for substantially the same property is \$140,000, with \$44,746.86 per annum additional for switch engines. The revenues of the Railway Transfer were not sufficient to pay the above rentals in 1920, but they were charged up and included in its operating expenses. The Minnesota commission's engineer submitted statements purporting to show that the total value on December 31, 1919, of all the property leased to the Railway Transfer was \$830,036.64, and that the value on December 31, 1920, of the five switch engines used by the Railway Transfer was only \$26,659.79. However, there is some question as to the identity of the engines used.

The manner of apportioning the expenses of the M. & St. L. between the Minneapolis terminal and the remainder of its line is criticized, first, because it was of necessity arbitrary in many instances, and, second, because the months used in the apportionment may not have been representative. The expenses under the maintenance of way and structures accounts for October, 1916, as apportioned to the Minneapolis terminal, are almost three times as much as the corresponding expenses shown for April, 1916, and the expenses for the test week are about the same as shown for the entire month of April, 1916. Such expenses fluctuate from month to month and during different seasons of the year.

The Minnesota commission fixed the value on June 30, 1906, of the M. & St. L.'s terminal, including that portion leased to the Railway Transfer, at \$2,455,990.38, and the additions and deductions since that date, with allowances for the condition of the property, as computed by the engineer for that commission, made the value on December 31, 1919, \$2,761,061.98. Respondents' witness testified that he multiplied by two the appraised value of the land, which constitutes the major part of the value of the terminal, in order to get the present cost of acquiring such land, including damages for severance from adjoining land. In *The Minnesota Rate Cases*, 230 U. S., 352, 61 I. C. C.

455, the Supreme Court held that the valuation of railroad land for rate-making purposes can not be increased beyond the fair average market value of similar land in the vicinity because of conjectural cost of acquisition and consequential damages.

The use of cost figures in determining the reasonableness of rates has been considered by us in several cases. When they are the result of painstaking efforts to arrive at just and reasonable results, such figures are not to be disregarded because they may not be correct in every detail and are based in part on estimates. *Switching Charges at Milwaukee, Wis.*, 32 I. C. C., 509.

The present charges of respondents are substantially the same as those of other lines performing switching services at Minneapolis, namely, the Omaha, the Great Northern, the Northern Pacific, the Soo line, the Chicago, Milwaukee & St. Paul, the Chicago, Rock Island & Pacific, the Chicago Great Western, the Minneapolis Western, and the Minneapolis Eastern. The two carriers last named are terminal or switching lines owned by certain of the trunk lines. The Omaha and the Soo line are opposed to any increase in the switching charges of respondents, unless uniform increases are made by all lines and unless like charges are established at certain other points. They admit that the present charges are not remunerative. The present charges were established on a reciprocal basis, but respondents contend that they are not reciprocal, in that some lines, including the Omaha and the Soo line, have fewer industries on their rails than have the other carriers. In *Switching at Galesburg, Ill.*, 31 I. C. C., 294, 299, we said:

* * * the so-called reciprocity theory of establishing switching charges would seem to be open to serious objection because of its indefiniteness and its tendency to lack of uniformity, as compared with the other theory that the charges for any given switching or terminal service should be established to secure a proper return for the service in question considered by itself.

Respondents cite switching charges at various points in western trunk line and other territories which are higher than their present charges, some of them higher than their proposed charges, as follows:

Switching line.	Switching charge.	Location.
N. P.	\$3.50	St. Paul, from M. & St. L. to St. Paul Bridge & Terminal.
Soo line.	\$3-\$5	Throughout Wisconsin.
C., R. I. & P.	\$4	Des Moines, Iowa.
C., M. & St. P.	\$4	Aberdeen, S. Dak.
Do	\$4	Albert Lea, Minn.
Do	\$5.50	Waukegan, Wis.
Do	\$7	Kansas City, Mo.
G. N.	\$9.45-\$17.51	St. Paul; Minnesota By-Products Co.
N. P.	1.5 cents per 100 pounds	St. Paul-Minnesota Transfer on sand and gravel.
N. P.	1.5 cents, minimum \$3	St. Paul-Minnesota Transfer, to coke plant.
C., M. & St. P.	1.5 cents, minimum \$9	Milwaukee, Wis.

In *Switching Charges at Milwaukee, Wis., supra.*, we found justified an increase in reciprocal switching charges of \$2, \$2.50, and \$3, dependent upon distance, to, 1 cent per 100 pounds, minimum 60,000 pounds. The distances covered by the switching at that city ranged as high as 15 miles. The present charge for that service at Milwaukee is 1.5 cents per 100 pounds, minimum 60,000 pounds.

Protestants fear that the proposed increases would be disastrous to the city of Minneapolis as a grain market and milling center, especially because of the nonabsorption of switching charges on inbound shipments of grain. They cite the following general switching charges at other points in western trunk line territory, some of which are as low as or lower than respondents' present charges:

Switching line.	Switching charge.	Location.
C. M. & St. P.....	\$1.....	Winona, Minn.
C. R. I. & P. and C. B. & Q....	\$1.50.....	Peoria-Pekin, Ill.
C. M. & St. P.....	\$1.50.....	Menasha-Neshah, Wis.
Soo line.....	\$1.50.....	Do.
C. R. I. & P.....	\$1.50.....	Muscataine, Iowa.
C. G. W.....	\$1.50—\$2.....	Savanna, Ill., effective February 20, 1920.
Soo line.....	\$1.50—\$2.....	Manitowoc, Wis.
Do.....	\$2—\$2.50.....	Duluth, Minn.
C. G. W.....	\$2.50.....	Council Bluffs, Iowa—Omaha, Nebr.
Do.....	\$4.....	St. Paul—South St. Paul, Minn., 5 miles.
Do.....	\$4.....	Chicago, on grain.
C. B. & Q.....	\$4—\$5.50.....	North Kansas City.
Do.....	\$7.....	St. Louis, Mo.
Do.....	\$7—\$9.....	Kansas City—North Kansas City.

Taken as a whole, the comparisons offered by the respective parties support the statement in *Switching Absorptions, supra.*, that the charges at Minneapolis are materially lower than the switching charges imposed at other points where the conditions are fairly comparable with those at Minneapolis.

The cost figures submitted, when considered in the light of the criticisms made and in the light of the other evidence of record, including the numerous rate comparisons, are not sufficient to justify increases in switching charges as great as proposed by respondents. Nevertheless, the inadequacy of the present revenues has been clearly demonstrated.

On brief the Minnesota commission says that on February 3, 1921, schedules applicable to intrastate traffic similar to those on interstate traffic here under suspension were filed with it for approval, but that no action thereon had been taken, and expresses its readiness to cooperate with us in a joint investigation. This seems desirable, and our findings herein are without prejudice to any different conclusion that may be reached after the joint investigation for which this proceeding will be continued.

We find that respondents have not justified the increased charges on interstate traffic proposed in the schedules under suspension, and

that the following will be reasonable and just charges on carload shipments for the services specified: At Minneapolis, \$3 for intermediate switching between connecting lines, and for switching commodities, including grain and grain products, between industries on respondents' lines and interchange tracks with connecting lines; and at St. Louis Park and Hopkins, \$4 for switching shipments between industries on the M. & St. L. and interchange tracks with connecting lines at those points, respectively.

We further find that no sufficient justification has been offered for the proposed limitation by the Omaha and Soo line of absorption of switching charges, which would result in increases in the charges assessed for line-haul movements against certain shippers and receivers of freight.

An order will be entered requiring the cancellation of the schedules under suspension. Respondents may, however, file new schedules in conformity with the findings herein upon not less than five days' notice.

HALL, Commissioner, concurring:

I think the respondents have justified a charge of more than \$3 per loaded car on interchange switching of commodities other than grain and grain products, but not the charge of \$8 which they proposed. A charge of \$6 would seem to me reasonable for this service.

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No. 11538.

CRUCIBLE STEEL COMPANY OF AMERICA

v.

DIRECTOR GENERAL, AS AGENT, AND PENNSYLVANIA
RAILROAD COMPANY.

Submitted November 16, 1920. Decided May 9, 1921.

Charge for switching of tank cars at Pittsburgh, Pa., found to have been unreasonable. Reparation awarded.

Allen H. Kerr for complainant.

Guernsey Orcutt for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner.

By complaint filed June 11, 1920, the Crucible Steel Company of America, a corporation engaged in the manufacture of steel at Pittsburgh, Pa., alleges that the rate charged for the movement of 77 tank cars of oil between complainant's plants in the city of Pittsburgh, during the period from January 4, 1919, to May 8, 1919, was unjust and unreasonable to the extent that it exceeded the subsequently established rate of \$3 per car. We are asked to award reparation.

Complainant's main plant, known as the Park Works, is located at Thirtieth and Smallman streets in the city of Pittsburgh. Tanks for the storage of fuel oil have been constructed on other property belonging to complainant at Thirty-eighth street. Both tracts of land adjoin the Conemaugh division of the Pennsylvania, over which the oil from the tanks was moved in tank cars to Thirtieth street. The movement constitutes a haul of approximately six blocks, or about 3,500 feet, over the tracks of the trunk line from a point south of Thirty-eighth street to a point north of Thirty-second street, where the cars pass on to the tracks of the Pittsburgh & Allegheny River, an industrial road, separately incorporated but controlled by the Crucible Steel Company through stock ownership. It performs terminal switching for the trunk lines and plant switching for complainant, and assesses for the latter service a charge of \$2.50 per car. The Pittsburgh & Allegheny River sup-

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plied engines and crews, and 60 of the 77 tank cars for the shipments under consideration, the other 17 being private tank-line cars. The defendant carrier provided only the use of its tracks.

At the time complainant's tanks were completed in December, 1918, the applicable rate for switching between the tanks and its Park Works was 30 cents per ton, which was a general, or blanket, switching rate published by the Pennsylvania to cover the movement of carload traffic over one division within the Pittsburgh switching district. On application by complainant for a lower rate defendants established, effective May 12, 1919, after the movement of the 77 cars, a rate of \$3 per car on petroleum and its products from one plant on the Conemaugh division to another plant of the same interest on the same division, distance not to exceed 10 blocks and movement to be made by individual power over railroad-company tracks; arrangements for use of tracks to be granted by the railroad company. It was stated that during the period when the general charge of 30 cents per ton was applicable on shipments of oil, there was contemporaneously maintained a rate of \$3 per car on iron and steel articles, carloads; on ore, except iron ore; on brick, dolomite, and limestone, and on practically all of the raw materials utilized in complainant's plants. It was shown by complainant that under the charge of 30 cents per ton, the revenue per car paid to defendants for the use of the track varied from \$5.60 to \$10.25. These charges were in addition to the \$2.50 charge paid to the Pittsburgh & Allegheny River for its services.

Defendants did not attempt to justify the charge of 30 cents a ton and admitted at the hearing that that charge did not contemplate a movement by individual power and in cars not belonging to the carrier, but was intended to cover the entire cost of transportation.

It is to be noted that the transportation in question, as well as the change in the charge for such movements, occurred during the period of federal control. While we find that the charges were unreasonable for the service furnished by defendants, we express no opinion as to the propriety or legality of such a tariff provision applicable to interstate shipments.

We find that the charge assailed was unreasonable to the extent that it exceeded the subsequently established charge of \$3 per car; that complainant moved the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$465.68, with interest. We are without authority to order refund of war taxes.

An order awarding reparation will be entered.

No. 11572.

BIRDSBORO STONE COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY AND DIRECTOR
GENERAL, AS AGENT.

Submitted January 5, 1921. Decided May 5, 1921.

Rates on crushed stone, in carloads, from Monocacy, Pa., to destinations in Pennsylvania during federal control found unreasonable. Reparation awarded.

Douglass D. Storey for complainant.

Henry Wolf Bickel for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in quarrying stone at Monocacy, Pa., by complaint filed June 24, 1920, alleges that the rates charged on certain shipments of crushed stone, in carloads, from Monocacy to destinations in Pennsylvania during the period between June 25 and December 25, 1918, were unjust and unreasonable. We are asked to award reparation.

Monocacy is a nonagency station on the Pennsylvania under the supervision of the agent at Birdsboro, Pa. The shipments moved over the Pennsylvania. Charges were collected at the applicable rates, which in each instance exceeded the distance rates under a scale established by defendants for intrastate shipments on May 1, 1919. This scale is upon the basis of the distance scale of maximum rates on crushed stone, in carloads, prescribed for application from Birdsboro to points in near-by states in *State of Maryland v. B., C. & A. Ry. Co.*, 49 I. C. C., 681, decided April 20, 1918.

In *Birdsboro Stone Co. v. P. R. R. Co.*, 61 I. C. C., 46, we found that the rates charged from Monocacy on intrastate shipments were unreasonable to the extent that they exceeded the rates established on May 1, 1919, and awarded reparation accordingly.

Following the case last cited, and upon this record, we find that the rates assailed were unreasonable to the extent that they exceeded those established on May 1, 1919; that complainant made the ship-

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ments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 11734.

MAGUIRE & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.

Submitted January 8, 1921. Decided May 5, 1921.

Demurrage charges on 21 carloads of hay held at Covington, Ky., on account of embargoes, found not unreasonable or otherwise unlawful. Complaint dismissed.

Norman & Graham and George F. Graham for complainants.

William Burger for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Charles S. Maguire and Frank B. Maguire copartners, trading under the name of Maguire & Company, and engaged in the hay and grain business at Cincinnati, Ohio, allege that unreasonable and unlawful demurrage charges were collected by defendants for the detention at Covington, Ky., of 21 carloads of hay during April and May, 1918. Reparation only is asked.

The shipments originated at Ottawa, Ontario, Canada, between March 26 and April 17, 1918, were consigned to Covington, moved into Cincinnati over the Cleveland, Cincinnati, Chicago & St. Louis, hereinafter called the Big Four, and were switched by the Louisville & Nashville, hereinafter called defendant, to Covington and placed on team tracks at Pike street yard. The Cincinnati rate applied, as
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the line-haul carriers absorbed the switching charges of defendant to Covington.

The shipments were billed shipper's order, notify complainants. They arrived at various times between April 16 and May 5, 1918, both inclusive, and defendant duly notified complainants by telephone and letter.

Complainants then requested defendant to switch the cars to designated plug tracks in Cincinnati on which hay was sold at public auction each morning. The plug tracks belonged to defendant but were rented by the Cincinnati Hay & Grain Exchange and to effect delivery there it would have been necessary to switch the cars over the lines of defendant and the Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter called the Pan Handle, which latter road serves these tracks. All carriers mentioned were under federal control.

When the shipments left Ottawa the Director General of Railroads had embargoed hay consigned to Cincinnati over the Big Four. Complainants admit that the shipments were intended for Cincinnati and that the shipper billed them to Covington to circumvent this embargo. The Director General also had in effect embargoes against the movement of all freight, except certain commodities not including hay, and except on intraplant service, by the Big Four and the Pan Handle between points within the switching district of Cincinnati and by defendant between points in Cincinnati, Covington, and Newport, Ky. On account of the latter embargoes, defendant refused to move the shipments from Pike street yard unless complainants first obtained a permit therefor from the Cincinnati advisory committee of the United States Railroad Administration, which had recommended the laying of the embargoes. Subsequently complainants requested defendant to switch the cars to points in Newport, but, as this movement was also embargoed, that request was denied. After considerable delay complainants procured authority from the advisory committee to have the cars switched to a warehouse in Cincinnati on the tracks of the Big Four. This movement was promptly effected and the cars were released on May 11, 1918.

During the time the cars were held at Covington demurrage charges and war taxes amounting to \$1,221.31 accrued, and complainants ask reparation in that amount less war taxes.

Complainants do not attack the propriety of the embargoes, but contend that they were entitled to the switching movement requested at the charges applicable thereto. This contention is not sustained since each and every movement requested was embargoed and the tariffs of defendant prohibited reconsignment to an embargoed point. Complainants' witness testifies that inspection of the hay

was denied them while the cars were held by defendant and that some of the cars were so placed that they were inaccessible to drays and could only have been unloaded by moving the hay through other cars. Permission to inspect the shipments was not indorsed on the billing. The demurrage did not, however, accrue by reason of complainants' inability to inspect or unload the hay at the Pike street yard, but accrued while complainants were endeavoring to have the cars moved to points that were embargoed. Defendant also points out that surrender of the original bill of lading is required in connection with the reconsignment of order-notify shipments and that bills of lading covering these shipments were not presented until May 10, 1918.

Complainants concede that if any demurrage charges were legally assessable the amount collected was in accordance with the tariffs. No evidence was presented to prove that the charges were unreasonable. We find that the charges attacked were not unreasonable or otherwise unlawful. An order dismissing the complaint will be entered.

61 I. C. C.

No. 11648.

INTERIOR LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BOYNE CITY,
GAYLORD & ALPENA RAILROAD COMPANY, ET AL.

Submitted February 7, 1921. Decided May 5, 1921.

Allegation that charges on hemlock lumber, in carloads, from Boyne City, Mich., to certain points in Pennsylvania were assessed on excessive weights, not sustained. Complaint dismissed.

W. J. Herman for complainant.

E. M. Davis, C. T. Sherman, and John J. Heard for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation dealing in lumber at Pittsburgh, Pa. By complaint filed July 19, 1920, it seeks reparation on 16 carloads of lumber shipped between April 5 and May 11, 1918, inclusive, from Boyne City, Mich., to certain points in Pennsylvania, and alleges that the charges thereon were unlawful and unreasonable because based on excessive weights. The rates applied to the shipments were not assailed.

Using complainant's figures, the shipments consisted of hemlock lumber of various dimensions, 324,472 feet rough, and 49,500 feet dressed in transit, billed by defendants as 1,185,460 pounds and 118,500 pounds, respectively, and charges were collected based on those weights. Complainant contends that the charges should have been based on estimated weights per 1,000 feet of 2,500 pounds for the rough lumber and 2,000 pounds for the dressed lumber. Its witness testified that charges on three other shipments corresponded with charges based on such estimates but that the weights used in computing these charges greatly exceeded the estimated weights. No one having personal knowledge of the date when the lumber was cut, its grade, or character, appeared at the hearing. Substantially the only evidence introduced by complainant consisted of exhibits tending to show that the lumber was in stock on January 30, 1918, and that at the time of purchase complainant expected the

weight not to exceed 2,500 pounds per 1,000 feet. One of these exhibits shows that part of the lumber was green. Complainant has no record of weights taken by wagonloads or otherwise.

Defendants' evidence is that these shipments were properly track-scaled by experienced men either at Boyne City on scales of the initial carrier, or at Cadillac, Mich., or Fort Wayne, Ind., on scales of intermediate carriers, and that the scales were accurate. The lumber came from a region subject to much moisture and heavy snows. They admit that the shipment in car P. & L. E. 42313 was overcharged \$2.06. The record also indicates overcharges on the shipments in cars B. & M. 23485 and C. & N. W. 77137. All overcharges should be promptly refunded. Against the weights thus ascertained by track-scale weighing of the several shipments complainant sets up only estimated weights not based on ascertained weight of any part of the shipment. Upon this record it can not prevail.

We find that the charges assessed were not unreasonable, and the complaint will be dismissed.

61 I. C. C.

No. 11637.
LITTLE CAHABA COAL COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted February 15, 1921. Decided May 5, 1921.

Rate on coal, in carloads, from Piper, Ala., to Grasselli, Ala., during federal control, found not unreasonable. Complaint dismissed.

James J. Jackson for complainant.

W. N. McGehee for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATTCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation mining coal at Piper, Ala., alleges that the rate charged on eight carloads of coal shipped from Piper to Grasselli, Ala., during July, 1919, was unreasonable. Rates will be stated in amounts per net ton.

Piper is in central Alabama and is served by the Southern and the Louisville & Nashville. Grasselli, about 7 miles south of Birmingham, Ala., is served by the Alabama Great Southern, the Louisville & Nashville, and the Southern. The shipments moved over the Southern and the Alabama Great Southern, and charges thereon were collected at the applicable rate of 90 cents. There was contemporaneously in effect from Piper to Grasselli a rate of 70 cents via the Louisville & Nashville direct. The shipments were routed over the Southern because of inability to get cars from the Louisville & Nashville. At complainant's request the rate over the route of movement was reduced to 70 cents on February 9, 1920.

It does not appear from the evidence that the 90-cent rate was intrinsically unreasonable. We have repeatedly found that the mere existence of a lower rate between the same points over another route and the subsequent reduction of a rate under attack do not furnish evidence sufficient to warrant a finding of unreasonableness in the absence of other supporting facts.

Upon the record we find that the rate charged was not unreasonable. The complaint will be dismissed.

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No. 11575.

ANSALDO & NICHOLAS

v.

DIRECTOR GENERAL, AS AGENT.

Submitted February 14, 1921. Decided May 5, 1921.

Rate on wooden truck barrels, in carloads, from Norfolk, Va., to Charleston, S. C., found not unreasonable. Complaint dismissed.

Harry F. Masman and Thos. J. Burke for complainants.

Henry Thurtell for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants, H. A. Ansaldo and Julius W. Nicholes, copartners trading under the firm name of Ansaldo & Nicholes at Charleston, S. C., allege that the rate charged by defendant on wooden truck barrels, in carloads, shipped during March, April, and May, 1919, from Norfolk, Va., to Charleston, was unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation. Rates will be stated in amounts per 100 pounds unless otherwise specified, and do not include the general increase of 1920.

The shipments moved over the Atlantic Coast Line, 391 miles. Charges were collected at the applicable fifth-class rate of 45 cents, minimum 10,000 pounds on cars 36 feet 6 inches and under in length, with proportionately higher minima on larger cars. The weights averaged about 11,200 pounds, and the charges \$50.45 per car. Defendant established a rate of \$35 per car of 12,000 pounds, excess in proportion, effective December 31, 1919, and complainants seek reparation to that basis.

A rate of \$35 per car of 12,000 pounds contemporaneously applied from Norfolk and other Virginia cities to stations north of Charleston on the main line of the Atlantic Coast Line, St. Stephens, S. C., to Ashley Junction, S. C., inclusive. These points are approximately 346 and 385 miles, respectively, from Norfolk. The rates to points north of St. Stephens, Wilson, N. C., to Lanes, S. C., inclusive,

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ranged from \$19 to \$32.50 per car for distances of 132 to 338 miles. The \$35 rate also applied to main-line stations between Charleston and Savannah, Ga., for distances ranging from 400 to 481 miles. The rates to various branch-line stations in South Carolina, 289 to 346 miles from Norfolk, ranged from \$32.50 to \$35 per car. The rate charged yielded 12.9 cents per car-mile based on the average charge per car. The rates to main-line points north and south of Charleston would yield an average of 9.92 cents per car-mile on a minimum carload for the average distance of 342 miles. Those to the branch-line stations would yield an average of 10.31 cents per car-mile for an average distance of 319 miles.

Complainants show that the intrastate distance scales of Georgia, Florida, and North Carolina applicable on barrels, in carloads, and the scale prescribed on barrels in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, 355, for single-line application, increased 25 per cent, would yield \$32.50, \$29.50, \$31.50, and \$24, respectively, per car of 10,000 pounds for a distance of 400 miles; and that the South Carolina intrastate scale similarly increased would yield \$20 per car of 10,000 pounds for the maximum distance of 300 miles. They offered the following comparisons with contemporaneous commodity rates on barrels from and to various southern points:

From—	To—	Distance.	Rate per car.	Earnings per car-mile.
		<i>Miles.</i>		<i>Cents.</i>
Albany, Ga.....	Charleston, S. C.....	323	\$22.50	6.96
Atlanta, Ga.....	do.....	309	25.00	8.09
Birmingham, Ala.....	do.....	476	27.50	5.98
Columbus, Ga.....	do.....	387	25.00	6.43
Cordele, Ga.....	do.....	263	22.50	8.55
Montgomery, Ala.....	do.....	433	27.50	6.35
Charleston, S. C.....	Greenville, S. C.....	321	25.00	7.78
Churchland, Va.....	Charleston, S. C.....	580	25.00	4.31
Hargrove, Va.....	Savannah, Ga.....	601	31.00	5.24
Average.....		410	25.72	6.63

¹Per car of 12,000 pounds, excess in proportion.

²Via Atlantic Coast Line 388 miles; 6.44 cents per car-mile.

For about 10 years before June 15, 1916, the rate from Norfolk to Charleston was \$20 per car and to main-line stations on the Atlantic Coast Line north and south of Charleston, \$28 per car of 12,000 pounds. On the latter date the commodity rate to Charleston was canceled, leaving in effect the fifth-class rate. Defendant explains that this action was taken in connection with the general readjustment following *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and that for various reasons the rates from and to the other points were not similarly revised. It did not undertake to justify

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the resulting departures from the long-and-short-haul provision of the fourth section and admits that the rate attacked was unduly prejudicial. Defendant contends, however, that the fifth-class rating and rate were reasonable.

In *Classification of Empty Barrels*, 25 I. C. C., 641, we found justified a proposed change in the rating on empty barrels from sixth to fifth class in southern classification territory. Since December 30, 1919, the consolidated classification has rated empty slack barrels, in carloads, third class in southern, official, and western territories. Defendant shows that the fifth-class rate of 45 cents from Norfolk to Charleston was depressed by water competition and that it was materially lower than the fifth-class rates from Norfolk to intermediate points, from the Virginia cities to other points in South Carolina, and from Memphis, New Orleans, and other river crossings to points in the Mississippi Valley and the southeast for corresponding distances. It is also shown that the earnings per minimum carload were lower under the rate attacked than on other commodities, except piling and fertilizer material, and that the earnings per car-mile approximated one-half the average earnings per car-mile of the Atlantic Coast Line for the year 1919 on all traffic.

We find that the rate attacked was not unreasonable. The undue prejudice conceded has since been removed and it is not shown that complainants were damaged thereby. The complaint will be dismissed.

61 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1292.
SWITCHING COAL AND COKE AT HARRISONBURG, VA.

Submitted March 16, 1921. Decided May 18, 1921.

Proposed increased charge for switching coal and coke, in carloads, at Harrisonburg, Va., found not justified. Suspended schedules ordered canceled.

Francis R. Cross for respondents.

S. S. Ashbaugh and *C. B. Williamson* for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

By schedules filed to become effective February 1, 1921, the Baltimore & Ohio, hereinafter called respondent, proposes to establish a charge of 35 cents per net ton in lieu of its present charge of \$3 per car for switching interstate shipments of coal and coke from its point of interchange with the Chesapeake Western at Harrisonburg, Va., to industries on its line and to its connection with the Southern at that point. Upon protest of the Chesapeake Western the schedules were suspended until July 1, 1921.

The maximum switching movement is about three-fourths of a mile. Protestant began operation in or about 1899. From then until 1908, respondent's charge for switching coal and coke at Harrisonburg for protestant was \$2 per car. In 1908 the charge was increased to 25 cents per ton, reduced on January 4, 1919, to \$2 per car by the Director General of Railroads, and on August 26, 1920, following our authorization of July 29, 1920, increased to \$3. Respondent asserts that the reduction on January 4, 1919, was made over its protest, that the present charge is not compensatory, and that it desires merely to restore the former charge of 25 cents per ton, increased in accordance with our authorization of July 29, 1920. Based on the average loading of 50 tons the proposed charge would be \$17.50 per car.

Respondent does not propose to increase its present charge at Harrisonburg of \$3 per car for switching freight other than coal and coke for protestant, or for switching coal and coke for the Southern. In seeking to justify the higher charge for switching for protestant, respondent urges that the Southern offers reciprocal advantages consisting of trackage rights and the joint use of freight

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and passenger facilities at Harrisonburg, trackage rights at Strausburg Junction, Va., and substantial rights at Potomac Yard, Va., and also gives access to consuming points for respondent's coal not reached by protestant.

Respondent compares the proposed charge with its charge of 56 cents per ton for nonreciprocal switching at Baltimore, Md., and with distance rates higher than 56 cents per ton for switching coal at other points where there is no element of carrier reciprocity. No showing is made of similarity of conditions. Respondent's charge for switching coal at Cumberland and Hagerstown, Md., is 21 cents per ton. This service, it says, is reciprocal. Respondent also compares the proposed charge with divisions accruing to protestant out of joint rates on coal to Harrisonburg and beyond, and refers to protestant's absorption of the former charge of 25 cents out of its division of the rates to Harrisonburg. These comparisons do not afford a basis for determining what a reasonable charge for the service in question would be. Respondent submitted no estimate of the cost of this service.

We find that respondent has not justified the proposed increased charge. An order will be entered requiring cancellation of the schedules under suspension and discontinuing this proceeding. The present charge may be too low, but this record affords no basis for determining what charge would be reasonable.

61 I. C. C.

No. 11611.

MULKEY SALT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, WABASH RAILWAY
COMPANY, ET AL.

Submitted January 6, 1921. Decided May 10, 1921.

Shipments of salt, in carloads, from Detroit, Mich., to points in Virginia and Tennessee found to have been misrouted. Reparation awarded.

Nuel D. Belnap, W. J. Tomkins, and Borders, Walter, Burchmore & Collin for complainant.

Royal McKenna for Director General, as Agent.

L. H. Strasser for Wabash Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing and marketing salt at Detroit, Mich., alleges that because of misrouting the charges collected by defendants on 10 carloads of salt shipped from Detroit to Bristol, Tenn., and Roanoke, Richmond, Glade Springs, Petersburg, Clifton Forge, and Bluefield, Va., in December, 1917, and January and February, 1918, were unreasonable and unduly prejudicial. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

Complainant's plant is served only by the Wabash, and the cars were delivered to that carrier routed to Bristol, Glade Springs, and Bluefield over the Wabash, Hocking Valley, and Norfolk & Western; to Roanoke over the Wabash, Hocking Valley, Chesapeake & Ohio, and Virginian; to Richmond and Clifton Forge over the Wabash, Hocking Valley, and Chesapeake & Ohio; and to Petersburg over the Wabash and Norfolk & Western or the Wabash, Hocking Valley, and Norfolk & Western. The bills of lading in each case contained a notation that the rate applicable should be 17.5 cents, with the exception of the Glade Springs and Bristol shipments, the bills of lading for which indicated that the rate should be 22.5 cents. No commodity

rate was in effect over the routes specified, but commodity rates of 17.5 and 22.5 cents, respectively, were contemporaneously applicable in connection with the Pere Marquette, Michigan Central, or New York Central. The shipments moved as routed, and charges were collected at the sixth-class rate of 20.5 cents, except that to Glade Springs and Bristol the sixth-class rate of 25.5 cents was applied.

Three shipments to Roanoke and Richmond, made in December, 1917, prior to federal control, aggregated 242,000 pounds, and freight charges of \$496.10 were collected thereon at the 20.5-cent rate. Details respecting the remaining shipments were not submitted.

When both the rate and route are inserted by the shipper in the bill of lading and they do not coincide, it is the duty of the initial carrier's agent to ascertain from the shipper before forwarding the shipments whether he desires that the instructions as to the rate or the route shall govern. See *Conf. Ruling 474(c)*. The carrier's agent failed to follow this course.

We find that the shipments were misrouted; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged by the misrouting in the amount of the difference between the charges collected and those which would have accrued if the shipments had moved by way of the lines over which the rates of 17.5 and 22.5 cents applied; that it is entitled to reparation from the Wabash Railway Company on the shipments made in December, 1917, in the sum of \$72.60, with interest, and from the Director General, as Agent, on the shipments made in January and February, 1918. The exact amount of reparation due from the Director General, as Agent, can not be determined upon this record, and as to these shipments complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

61 I. C. C.

No. 11812.

RUSSELL BROTHERS

v.

DIRECTOR GENERAL, AS AGENT, UNION PACIFIC RAIL-
ROAD COMPANY, ET AL.

Submitted November 8, 1920. Decided May 5, 1921.

Rate on range cattle, in carloads, from Rock Springs, Wyo., to Storey, Calif., found unreasonable to the extent that it exceeded the aggregate of the intermediate rates to and beyond Ogden, Utah. Measure of reasonable maximum rate prescribed for the future.

Alex. Gould for complainants.

Elmer Westlake and *M. A. Cummings* for Director General, as Agent, and Southern Pacific Company.

M. W. Reed for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

BY DIVISION 3:

Complainants, H. S. Russell and J. H. Russell, copartners engaged in buying and selling live stock at Storey, Calif., under the trade name of Russell Brothers, allege that the joint rate of \$222 per 36-foot car charged for the transportation of 25 carloads of range cattle on October 4, 1919, from Rock Springs, Wyo., to Storey was unreasonable to the extent that it exceeded the aggregate, \$201, of the intermediate rates to and beyond Ogden, Utah. The prayer is for reparation and the establishment of a reasonable rate for the future. Rates are stated in amounts per 36-foot car and do not include the general increases authorized in 1920.

The shipments moved in 36-foot cars from Rock Springs to Ogden over the Union Pacific, thence Southern Pacific to Stockton, Calif., and beyond over the Atchison, Topeka & Santa Fe, 1,036.6 miles. Charges were collected in the sum of \$5,550 at the applicable joint rate of \$222.

Prior to June 25, 1918, the rate from Rock Springs to Ogden was \$53 and from Ogden to Storey \$133, a total of \$186. On June 25, 1918, under general order No. 28 of the Director General of Railroads, rates on live stock were increased 25 per cent "but not exceeding * * * \$15 per standard 36-foot car." When the ship-

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ments moved defendants' tariffs provided that where rates were based on the sums of the intermediates the total increase authorized by general order No. 28 should not exceed "\$15 per standard 36-foot car." The aggregate of intermediate rates to and from Ogden was therefore \$201. This departure from the provisions of the fourth section of the interstate commerce act was appropriately protected.

Defendants admit that the rate assailed was unreasonable to the extent alleged. They express willingness to make reparation accordingly, and to establish for the future a rate not in excess of the aggregate of the intermediate rates to and beyond Ogden.

We find that the rate assailed was, and that the present rate is and for the future will be, unreasonable to the extent that they respectively exceeded and exceed the aggregate of the intermediate rates contemporaneously in effect to and beyond Ogden. The record does not afford a sufficient basis for a finding that the complainants paid and bore the charges on these shipments. Upon receipt of satisfactory proof that complainants paid and bore such charges we will consider the entry of an order awarding reparation.

An order for the future will be entered.

61 I. C. C.

No. 11487.

BUCKEYE VENEER COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

PORTIONS OF FOURTH SECTION APPLICATIONS
NOS. 1548 AND 2060.

Submitted December 23, 1920. Decided May 5, 1921.

1. Rate on oak lumber, in carloads, from Huntingburg, Ind., to Dayton, Ohio, found not unreasonable. Damage due to alleged unjust discrimination and undue prejudice not shown. Reparation denied and complaint dismissed.
2. Fourth section relief denied.

O. P. Gothlin for complainant.*C. B. Northrop, Charles J. Rixey, jr., and D. Lynch Younger* for Southern Railway Company and Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATTORISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued.

Complainant, a corporation manufacturing oak veneer at Dayton, Ohio, alleges that the rate of 17 cents charged on 34 carloads of oak lumber shipped between August, 1918, and December, 1919, from Huntingburg, Ind., to Dayton, was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of section 4 of the act to regulate commerce. We are asked to award reparation. Portions of fourth section applications No. 1548, filed by the Southern Railway Company, and No. 2060, filed by J. F. Tucker, agent, by which authority is sought to charge rates for the transportation of lumber from Belleville, Centralia, Fairfield, and Mount Carmel, Ill., to Dayton, which are lower than rates contemporaneously maintained on like traffic from Huntingburg and other intermediate points, were heard with this case. Rates are stated in cents per 100 pounds and do not include the general increase of 1920.

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Huntingburg is a local point on the St. Louis division of the Southern. Mount Carmel, Fairfield, Centralia, and Belleville are junction points between the Southern and various short-line routes to Dayton. The shipments moved between August 30, 1918, and December 18, 1919, some over the Southern to New Albany, Ind., and Baltimore & Ohio beyond; and others over the Southern to Louisville, Ky., and Cleveland, Cincinnati, Chicago & St. Louis beyond. The following table shows the distances and routes to Dayton from the points named, and also from St. Louis, Mo.:

	Short-line route.	Distances.		
		Short line.	S. Ry.— B. & O.	S. Ry.— C., C., C. & St. L.
To Dayton from—		Miles.	Miles.	Miles.
Huntingburg.....			255	271
Mount Carmel.....	G., C., C. & St. L. to Vincennes, Ind.; P., C., C. & St. L. beyond.	262	308	319
Fairfield.....	S. Ry. to Mt. Carmel; C., C., C. & St. L. to Vincennes, Ind.; P., C., C. & St. L. beyond.	306	337	355
Centralia.....	I. C. to Effingham, Ill.; P., C., C. & St. L. beyond..	308	330	405
Belleville.....	S. Ry. to E. St. Louis, Ill.; P., C., C. & St. L. beyond.	361	430	485
St. Louis.....	P., C., C. & St. L. direct.....	350	456	473

Charges were collected at the applicable commodity rate of 17 cents. The sixth-class rate from Huntingburg to Dayton also was 17 cents. The usual basis for rates on lumber in central territory is and long has been sixth class. Prior to August 25, 1919, a rate of 14.5 cents was in effect to Dayton from St. Louis and intermediate junction points west of Huntingburg. On that date the rate from Browns, Ill., and junction points east thereof was increased to 17 cents. Browns is between Mount Carmel and Fairfield. The short lines control the rate from St. Louis to Dayton, and apply it as maximum from intermediate points. The Southern met the rates of these intersecting short lines at junction points and now meets them, except as above stated, but as a rule has maintained and now maintains higher rates from intermediate local points. The commodity rate of 17 cents applied to Dayton from a large number of local points east and west of Huntingburg. Complainant asks that reparation be awarded to this basis of 14.5 cents. By the route through New Albany, 255 miles, the 17-cent rate yielded 13.3 mills per ton-mile.

Defendant refers to rates of 17 and 17.5 cents from Chicago, Ill., and Indianapolis, Ind., to destinations in Ohio, Indiana, and Illinois, 241 to 262 miles; 17 cents to Dayton from local stations on the Southern on either side of Huntingburg as far east as English, Ind., and as far west as Oakland City, Ind., both inclusive, 225 to 278

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miles; and 12.5 cents to 18 cents from various points in central territory to Dayton, 110 to 281 miles, yielding ton-mile earnings of from 10.5 to 22.9 mills.

In several cases decided prior to the increases following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and general order No. 28 of the Director General of Railroads, we passed upon rates from the territory in which Huntingburg is located. In *Stimson v. S. Ry. Co.*, 43 I. C. C., 429, we found not unreasonable rates of from 12 to 15 cents from Huntingburg to representative points in Illinois, Michigan, and Wisconsin, 298 to 445 miles, although lower rates were maintained from farther distant points south of Huntingburg. In *Stimson v. S. Ry. Co.*, 40 I. C. C., 169, we found not unreasonable a rate of 10 cents on lumber, applicable over an interstate route from Huntingburg to Shelbyville, Ind., 180 miles, although lower rates were applicable from more distant points of origin, and in *Collier v. S. Ry. Co.*, unreported, we found a rate of 12 cents from points on the Southern in southern Indiana to Chicago, 335 to 350 miles, not unreasonable. In *Class and Commodity Rates*, 38 I. C. C., 411, we recognized that the volume of traffic originating in the territory traversed by the Southern in southern Illinois and Indiana was comparatively light.

The fourth section departures, formerly existing at Mount Carmel and other junction points west of Huntingburg to and including Browns, had been removed before the date of the hearing, but those at the other junction points named still exist. The Southern does not oppose removal of the fourth section departures at Huntingburg and some of the other intermediate points. The distances to Dayton over the routes of movement from St. Louis and other competitive points mentioned are more than 115 per cent of the distances over the short routes. The Southern is compelled to meet the rates of the short routes at these points in order to secure the traffic. The distance to Dayton is less from Huntingburg over either of the routes of movement than from St. Louis, Belleville, Centralia, or Fairfield over the short routes. Under the amended fourth section we have no authority to authorize a lower charge to Dayton from St. Louis or other competitive points than from Huntingburg or other intermediate points, as to which the haul of the Southern and its connections is not longer than that of the direct line or route between St. Louis or other competitive points and Dayton. We can not, therefore, authorize a continuance of the departures at Huntingburg or other intermediate points similarly situated with respect to any such competitive point. The record shows that the Southern desires to remove any undue prejudice that may exist by increasing its rates from junction points west of Huntingburg rather than by reducing the rate of 17 cents from Huntingburg.

The applications for relief from the provisions of the fourth section will be denied to the extent that they are involved herein. In *Appalachia Lumber Co. v. L. & N. R. R. Co.*, 25 I. C. C., 193, 197, we pointed out that when a fourth section departure is protected by an appropriate application no damage can be awarded up to the time when we pass upon the fourth section application unless a case of undue prejudice is made out which might carry with it an award of damages or unless the rate charged from the intermediate point is found unreasonable. In the present case there is no proof of damage due to any unjust discrimination or undue prejudice which may have existed. We find that the rate assailed was not unreasonable. The complaint will be dismissed.

Appropriate orders will be entered.

61 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1296.
 INTERCHANGEABLE ACCEPTANCE OF 60-TRIP
 COMMUTATION TICKETS.

Submitted April 13, 1921. Decided May 13, 1921.

Proposal of the Pennsylvania and the Baltimore & Ohio railroad companies to discontinue the interchangeable use of their 60-trip commutation tickets between Washington and Baltimore found justified.

Henry Wolf Bihlé and Charles R. Webber for respondents.
A. T. Beck for protestants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

MEYER, Commissioner:

The respondents are the Baltimore & Ohio Railroad Company and the Pennsylvania Railroad Company. They propose by schedules filed to become effective March 1, and February 7, 1921, respectively, to discontinue the interchangeable use of their 60-trip commutation tickets between Washington and Baltimore. The operation of these schedules has been suspended until June 7, 1921.

The interchangeable use of these tickets was initiated September 1, 1918, by the United States Railroad Administration, when the respondents were under federal control and operation, and was occasioned by the congestion of passenger travel between Baltimore and Washington incident to an increase in the number of war workers in Washington and, to some extent, to a reduction in the number of trains between these points. The train service has been restored to substantially what it was before the war, and the number of commuters has materially decreased.¹ The respondents therefore desire to discontinue what they state was an emergency practice, for reasons which may be summarized in a general way, as follows:

(1) It contravenes the basic principle of monthly tickets, which is to accord a reduction from the normal one-way fare in consideration of a given number of identical trips within the month over the

¹ The respondents' combined sales of 60-trip commutation tickets between Washington and Baltimore were 2,711 in 1916; 3,894 in 1917; 7,549 in 1918; 8,192 in 1919; 6,815 in 1920. The monthly 1920 sales were 685 in January; 724 in February; 592 in March; 649 in April; 638 in May; 586 in June; 463 in July; 610 in August; 460 in September; 509 in October; 537 in November; 392 in December.

issuing line. If the commutation rate applies interchangeably over either of two lines, and the number of trips over each line is materially less than the number contemplated, there is reason for making the fare more nearly approximate the one-way fare.¹ It is suggested that even if the trips were always equally divided, 30 to each line, it would be the equivalent of each line charging for a 30-trip ticket on a 60-trip basis.

(2) It discriminates against commuters between other points on the respondents' lines, where the practice has been discontinued, except possibly in a few instances where trains of two companies operate over the same tracks between the same stations and where it is almost impossible for the public to distinguish between the trains of the two companies, or where the service is divided between two companies and the total service offered to the public. There was no protest from these other commuters when the practice was discontinued.

(3) The issuing line is deprived of the additional revenue per trip that would accrue to it, but for the concession made, on the theory that all of the trips would be taken over its line.

(4) There is difficulty in apportioning revenues between the respondents, which, unimportant during the period of unified operation under federal control, now becomes of first importance under a return to separate corporate management. Formerly the block ticket, with trips to be punched, was used. It was discontinued after the inauguration of the interchangeable practice because of the tax upon the conductors' time in keeping a record of trips over the line of each carrier. The substituted coupon book also proved unsatisfactory because of the delay incident to the collection of the coupons and the opportunity for their misuse. Finally the present block ticket was restored, with an arbitrary apportionment of revenues, based on the total sales of each respondent for a given period prior to federal control. It is argued that even if the number of trips actually taken over each line could be accurately determined by check it would not furnish an accurate basis for revenue distribution, in view of the fact that an average of about 10 trips each month remain unused. If, for example, the holder of a Baltimore & Ohio ticket should take only 20 trips on that line and 30 trips on the Pennsylvania, 10 trips remaining unused, the Baltimore & Ohio would receive half of the revenue for a service less than that rendered by the Pennsylvania, in connection with trips actually taken.

¹ The one-way fare is \$1.44. The commuter's monthly rate is \$20.40, or 84 cents per trip.

The foregoing are the objections which the respondents make in addition to their contention that we have no power to require this interchange, inasmuch as the request is not for a joint fare over their combined through route, but for the interchangeable use of tickets over their paralleling and competing routes, the reasonableness of the common charge for which is not in issue. The protestants, while expressing generally the view at the hearing that we have the requisite power under the present statute, filed no brief in support of that view.

Aside from the question of jurisdiction, the record affords no substantial ground for requiring a continuance of this practice. The protestants who appeared at the hearing were one resident of Takoma Park, D. C., who commutes to and from Washington in connection with his commutation trips between Washington and Baltimore, and four residents of Washington.¹ They refer to the great convenience afforded in the choice of trains on either line under the present arrangement. A point particularly stressed is that it is more convenient to take the 8.15 train of the Pennsylvania than the 7.45 or 7.55 train of the Baltimore & Ohio from Washington in the morning, and more convenient to take the 4.55 train of the Baltimore & Ohio than the 3.30 or 5.30 train of the Pennsylvania from Baltimore in the evening. They also refer to the advantage of alternative service in case of emergency. The advantage in all this is manifest, but it does not in itself warrant our ordering a continuance of the present practice. There is shown no urgent necessity for the interchange of tickets under present conditions. There is no evidence that the service of either of the respondents is inadequate. Commuters have the benefit of through trains between Washington and Baltimore en route from and to other points in addition to the trains that run only between Washington and Baltimore. Certain of these latter trains are run primarily for the benefit of the commuters and would be withdrawn but for that service. Certain of the latter trains also are through commutation express trains. So far as this record shows, the service of each of the respondents is ample to take care of its traffic.

We find that the proposed discontinuance of the interchangeable use of the respondents' 60-trip commutation tickets between Washington and Baltimore has been justified. The order of suspension will be vacated, and the proceeding discontinued.

¹ One of the protestants has been commuting for about 11 years without any previous registered protest. Another one of the protestants has been commuting since December, 1919, two since January, 1920, and one since about two months prior to the hearing. None of the commuters from Baltimore appeared at the hearing.

61 I. C. C.

No. 11163.¹
NORTHERN POTATO TRAFFIC ASSOCIATION
v.
**BALTIMORE & OHIO RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.**

Submitted March 24, 1921. Decided May 10, 1921.

1. Relationship of rates on potatoes, in carloads, from points in Minnesota and Wisconsin to destinations in trunk line territory found unduly prejudicial. Undue prejudice ordered removed.
2. Rates on the same traffic from same territory to northeast Texas points found unreasonable. Reasonable maximum rates prescribed. Same rates from same originating territory to Texas common points not included in northeast Texas found not unreasonable except (1) to extent they exceeded and exceed the aggregates of intermediate rates subject to the act and (2) to extent rates from points in Wisconsin north of Fox River territory exceeded and exceed rates found reasonable in report.
3. Cancellation of joint rate on same traffic from Bloomer, Wis., to Texas via Chicago, Ill., found justified.
4. Assessment of rental charge of \$5 per car during the winter months in addition to the freight rate on the traffic involved found not unreasonable.

Oliver W. Tong for complainant.

F. G. Dorety for defendants in No. 11163 and *F. G. Dorety, R. J. Hagman, and Charles D. Clark* for defendants in No. 11164.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

EASTMAN, Commissioner:

Exceptions to the proposed report were filed by the complainant, and we have reached conclusions differing from those recommended by the examiner.

These complaints, filed January 22, 1920, by an association of potato shippers, as amended bring in issue the rates and car-rental charges applicable on potatoes, in carloads, from producing points in Minnesota and Wisconsin to trunk line and Texas common-point territories. Rates herein are stated in cents per 100 pounds and do not include the general increases authorized by us on July 29, 1920.

¹ This report also embraces No. 11164, *Same v. Atchison, Topeka & Santa Fe Railway Company, Director General, as Agent, et al.*

RATES TO TRUNK LINE TERRITORY.

In No. 11163 complainant attacks the relationship between the car-load rates on potatoes to points in trunk line territory from points in Minnesota and Grantsburg, Wis., within what is called the Princeton group, and the corresponding rates from specified points in Wisconsin, alleging that this relationship unduly prefers the Wisconsin shippers to the undue prejudice of shippers within the Princeton group. Nonprejudicial rates are sought for the future.

The Princeton group is described as a triangular area extending about 60 miles north and northwest of St. Paul and Minneapolis. The points which it includes are all within the state of Minnesota with the single exception of Grantsburg. The Wisconsin points alleged to be preferred are Waupaca, Rhinelander, Eagle River, Viroqua, Eau Claire, Rice Lake, Park Falls, Alma, New Richmond, and points taking the same rates, as specified in agent Boyd's tariff I. C. C., No. A-743. These points, which are located within a territory comprising all of Wisconsin except a strip at the south and a strip at the north, take the same rates to trunk line territory and are hereinafter referred to as the Wisconsin group.

The relative adjustment is shown by the following comparisons, offered by complainant, of the rates from a typical shipping point within each group to representative destinations:

To--	From Princeton.		From Eau Claire.	
	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Buffalo, N. Y.	971	40.5	832	33
Rochester, N. Y.	1,040	49	901	41
Syracuse, N. Y.	1,121	51	982	43
Utica, N. Y.	1,173	54	1,084	46
Albany, N. Y.	1,268	56	1,129	48
Boston, Mass.	1,469	60	1,380	52
New York, N. Y.	1,350	57	1,211	49
Philadelphia, Pa.	1,267	55	1,128	47
Baltimore, Md.	1,246	54	1,107	46
Washington, D. C.	1,261	54	1,122	46
Lynchburg, Va.	1,215	54	1,076	46
Norfolk, Va.	1,419	54	1,280	46
Parkersburg, W. Va.	980	40.5	791	33
Huntington, W. Va.	886	40.5	767	33
Pittsburgh, Pa.	918	40.5	779	33
Johnstown, Pa.	994	45	855	37.5

The average distances and rates from Princeton and Eau Claire to six of the foregoing destinations, namely, Buffalo, New York, Washington, Norfolk, Pittsburgh, and Johnstown, and the average amount of the excess, Princeton over Eau Claire, are reproduced below from an exhibit submitted by complainant, together with the average ton-mile earnings:

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From—	Average distance.	Average rate.	Average ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Princeton.....	1, 152	48. 80	8. 5
Eau Claire.....	1, 013	40. 75	8
Average Princeton over Eau Claire.....	139	7. 75	. 5

Complainant shows that the rates from the Princeton group are the same as from the Wisconsin group to some points in central territory and higher by 2.5 cents or thereabouts to others. A rate of 33 cents applies from both groups to points just west of Pittsburgh, such as New Castle, Pa. Pittsburgh also takes this rate from the Wisconsin points, while from the Princeton group the rate is 40.5 cents, or 7.5 cents higher. Although complainant asks for a parity of rates from the two groups, it suggests that the Princeton group might properly take a differential of 2.5 cents over Wisconsin not only to trunk line territory but also to points west thereof in central territory. The latter rates are not in issue.

The record shows that shippers in the two groups compete in the sale of their potatoes within trunk line territory, and indicates that under the present adjustment this market is practically closed to shippers in the Princeton group except in abnormal years. Defendants made no attempt to defend this adjustment, admitting that the disparity between the rates is too wide. They contend, however, that the spread of 2.5 cents, proposed by complainant, is too small and state that the rates to central territory were established for the purpose of building up the potato industry in the northwest and are very low. They propose realigning the rates from the two groups not only to trunk line points but also to points in central territory. Under this proposed readjustment Waupaca, Wis., is used as a basing point for all of the rates, beginning with a local rate of 10 cents from Waupaca to Chicago, Ill., plus the fifth-class rates beyond. The present local rate from Waupaca to Chicago is 17 cents, but there is a local rate of 10 cents from Waupaca to Manitowoc, Wis., and from Manitowoc the Chicago rates, lake and rail, are available to many central territory destinations. The rates from points other than those now taking the Waupaca rates to all destinations would, under this adjustment, be made by adding to the Waupaca rates the same differences in cents per 100 pounds as exist between the Waupaca local rate to Chicago and the local rates from the other points to Chicago. Commodity rates so made would be less than the fifth-class rates in all instances. The rates from points in the Princeton group to destinations in trunk line territory would in most instances

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be 4.5 cents over the rates from Waupaca. Defendants' witness testified that this plan would have the effect of making a consistent rate adjustment into the east, and would remedy the discrimination against the Princeton group.

As complainant points out, such a revision would necessitate a regrouping of Wisconsin points, thereby disrupting a long-standing adjustment, and would result in increases from points in the Princeton group ranging from 2.5 cents at South Bend to 7.5 cents at Detroit. In some instances the rates from Wisconsin would be somewhat reduced, while in others they would be increased by as much as 7 cents. The only justification offered for this proposal is that the rates from the two groups would be brought into proper relation not only with each other but also with the rates from Michigan producing points, which are now on a relatively higher level. This record affords no basis for determining the propriety of the proposed revision. The measure of the rates is not before us in this proceeding, the burden of the complaint being that the rates from the Princeton group are improperly related to the rates from the Wisconsin group.

We find that the relationship of the rates on potatoes, in carloads, from and to the points in question is, and for the future will be, so long as the present groups are preserved, unduly prejudicial to points in the Princeton group and shippers there located and unduly preferential of the Wisconsin group and shippers there located to the extent that the rates from the Princeton group exceed or may exceed those from the Wisconsin group by more than 3 cents per 100 pounds, subject to the general increases authorized by us on July 29, 1920.

RATES TO TEXAS POINTS.

Prior to June 25, 1918, a commodity rate of 70 cents applied on potatoes, in carloads, to points in the so-called Texas common-point territory from the Princeton group, from Wisconsin producing points in and north of the so-called Fox River territory, and from St. Paul and Minneapolis. On that date this rate was increased to 87.5 cents under general order No. 28 of the Director General of Railroads, and on August 14, 1919, it was further increased to 88 cents on traffic originating in Wisconsin north of the Fox River territory. These rates are assailed in No. 11164 as unreasonable, and in violation of the fourth section in that they exceed the aggregates of the intermediate rates. The combination rate from Bloomer, Wis., to the same destination territory by way of Chicago is also attacked as unreasonable. We are asked to prescribe reasonable rates for the future and to award reparation on shipments moving on and after June 25, 1918.

These rates, except from Bloomer, were considered in *Northern Potato Traffic Asso. v. A., T. & S. F. Ry. Co.*, 50 I. C. C., 528, 58 I. C. C., 592. There we held that the rate of 70 cents in effect prior to June 24, 1918, from this originating territory to points in northeast Texas, of which Dallas and Fort Worth are representative, was unreasonable to the extent that it exceeded 65 cents, but not unreasonable, unjustly discriminatory, or unduly prejudicial to other destinations in Texas common-point territory, with the exception that the joint rate through Fort Smith, Ark., and Muskogee and Wagoner, Okla., to these other Texas common-point destinations was found unreasonable to the extent that it exceeded the aggregate of the intermediate rates subject to the interstate commerce act contemporaneously applicable over the same route to and beyond the respective basing points. Reparation was awarded, but as the Director General was not a defendant no finding was made with respect to the rates made effective on June 25, 1918.

In an endeavor to show not only that the present rates are too high but that the rate found reasonable in the case cited was likewise excessive, complainant submitted numerous comparisons, some of which were considered in the aforesaid case, while the value of others is impaired by the absence of a showing of similarity of transportation conditions. Complainant stresses the carload rate of 71.5 cents on potatoes from Texas to Minnesota and Wisconsin, which is made by adding 15 cents to the St. Louis rate of 56.5 cents. This northbound movement, as pointed out in the *Northern Potato Traffic Asso. Case*, is largely in stock cars and in the summer months, whereas the movement southbound is principally in the winter months when operating conditions are usually more difficult and there is risk of freezing. The carriers claim that these northbound rates were established to encourage and foster the industry, and the rate to St. Louis is said to be depressed by the rates from the southeast. The northbound rates on other vegetables, such as tomatoes, spinach, cabbage, and onions, are the same as those assailed, except that the rate on cabbage is 10 cents less, but the applicable minima are lower. It was testified for defendants that these rates were made low to encourage the growing of vegetables in southern Texas. Complainant also emphasizes the disparity between the rates assailed on potatoes and the corresponding rates on cereal products, pointing out that the latter take rates of from 51 to 56 cents, minimum 40,000 pounds, and of from 73 to 78 cents, minimum 20,000 pounds. However, comparisons of this kind between unlike commodities are not very helpful.

Under general order No. 28 the potato rates in question were increased either 17.5 or 18 cents per 100 pounds, while the grain and

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flour rates between the same points were increased only 6 cents per 100 pounds. It does not appear that these commodities are competitive. While there is evidence tending to show that the rates on potatoes were in some instances originally made with relation to the wheat rates, no definite relationship existed immediately prior to the adjustment effected under general order No. 28. Moreover, these commodities are hardly comparable from a transportation standpoint; grain moves in far greater volume and loads heavier than potatoes, the applicable minimum being 60,000 pounds, and is not subject to damage in transit in the same degree.

Complainant further points out that the rates in question exceed the aggregate of intermediate rates through Fort Smith, Muskogee, and Wagoner. These departures from the rule of the fourth section were considered in the *Northern Potato Traffic Asso. Case*, wherein we stated that they were similar to those in *Through Rates to Points in Louisiana & Texas*, 38 I. C. C., 153, and should be eliminated.

In defense of the assailed rates defendants submitted comparisons of the rates on various commodities, such as news-print paper, structural iron, and furniture, none of which is comparable with the traffic under consideration. They admit that the issue of reasonableness here presented is similar to that considered in the *Northern Potato Traffic Asso. Case*, but argue that we there gave undue effect to *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.*, 40 I. C. C., 619, wherein we required the establishment of a carload rate on potatoes from St. Louis, Mo., to northeast Texas at least 5 cents lower than the then existing rate of 58 cents. Following that decision the local rate on potatoes from St. Louis to northeast Texas was reduced to 53 cents, but the 58-cent rate was continued as a proportional rate on traffic from defined territory, with the result that the rates from producing points in Minnesota and Wisconsin, which either base on St. Louis or are made with relation to the rate from that point, received no benefit from the reduction. The effect of the decisions in the *Northern Potato Traffic Asso. Case* was to extend to producing points in Minnesota and Wisconsin the 5-cent reduction prescribed from St. Louis in the *Dallas Chamber of Commerce Case*. Defendants point out that in the latter case we said that it could not be concluded from the fact that the St. Louis rates were reduced that the through rates from all other points in defined territories were unreasonable; they fear that if the principle followed in the *Northern Potato Traffic Asso. Case* should be applied to all other commodities on which the local rates from St. Louis were reduced by the *Dallas Chamber of Commerce Case*, the entire adjustment to the southwest from defined territories would be jeopardized, and that the result would be "wholesale reductions wholly unwarranted." It is sufficient I. C. C.

cient to say that the only rates here in issue are those applicable to potatoes, and that the evidence does not indicate error in our former conclusions.

As stated, all the producing points in question formerly took the same rate to Texas common-point territory, i. e., 70 cents prior to June 25, 1918. On that date the rates were increased 25 per cent under general order No. 28 to 87.5 cents. On August 14, 1919, a specific basis was provided for making rates from points north of the Fox River territory which resulted in a joint rate of 88 cents, or 0.5 cent over the other points. No good reason is advanced in support of this difference.

Attention is also called by defendants to the fact that under the local rate from St. Louis the minima are 30,000 pounds from June 1 to September 30, and 36,000 pounds from October 1 to May 31, or 6,000 pounds higher than under the rates here in issue. It is insisted, therefore, that if reductions corresponding to that made in the *Dallas Chamber of Commerce Case* are required, the minima should be increased. The record shows that potatoes can be and are loaded in excess of the minima applicable under the rates assailed. The minima under the St. Louis rates are those generally in effect throughout official and western classification territories.

On October 7, 1912, the joint rate from Bloomer and other points in Wisconsin on the Chicago, St. Paul, Minneapolis & Omaha, hereinafter called the Omaha, to Texas via Chicago, with reconsigning arrangements at Chicago Junction, was canceled, leaving in effect higher combination rates via that route, although the same joint rate applied and, save for subsequent increases, now applies via Missouri River crossings. Complainant seeks the reestablishment of the joint rate via Chicago, setting forth alleged commercial necessities therefor. Defendants point out that this route short hauls the originating carrier, which secures a haul of but 109 miles via Chicago, whereas via Omaha, Nebr., it has a haul of 500 miles and via Sioux City, Iowa, 377 miles; and that the average distances to representative Texas points through these gateways are 1,364, 1,334, and 1,304 miles, respectively. Complainant argues that the Omaha is a part of the Chicago & North Western system and that the system haul via Chicago "would give a comparatively long haul into that point." However, the Omaha and the Chicago & North Western are separately operated companies. We think the cancellation has been justified.

We find that the rates in issue in No. 11164, except from Bloomer via Chicago, for the transportation of potatoes in carloads from the points of origin involved to points in northeast Texas, as defined in

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the *Dallas Chamber of Commerce Case*, page 621, were unreasonable to the extent that they exceeded 81.5 cents per 100 pounds, minima 30,000 and 36,000 pounds from June 1 to September 30 and from October 1 to May 31, respectively, and that they are, and for the future will be, unreasonable to the same extent, subject to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220. We further find that the rates to the other Texas destinations, not included in northeast Texas as above defined, were and are not unreasonable, except that the joint rates through Fort Smith, Ark., and Muskogee and Wagoner, Okla., to such Texas destinations were, are, and for the future will be unreasonable to the extent that they exceeded or may exceed the aggregate of the intermediate rates subject to the interstate commerce act contemporaneously applicable over the same route to and beyond the respective basing points; and, further, that the rate of 88 cents per 100 pounds applicable on and after August 14, 1919, and prior to August 26, 1920, from points in Wisconsin north of the Fox River territory to the said Texas destinations, not included in northeast Texas, was unreasonable to the extent that it exceeded 87.5 cents per 100 pounds, and that the present rate is, and for the future will be, unreasonable to the same extent, subject to the increases authorized in *Increased Rates, 1920, supra*. We further find that the cancellation on October 7, 1912, of the joint rate from Bloomer to Texas common points via Chicago has been justified.

RENTAL CHARGES FOR REFRIGERATOR OR INSULATED CARS.

During the period from October 15 to the following April 15 a charge of \$5 per car per trip applies on potatoes in refrigerator or insulated cars, in addition to the transportation rates, from and to the territories involved in these proceedings. This practice, complainant alleges, results in unreasonable aggregate charges during the winter months, and it asks that the charge be eliminated.

This same issue has been before us in other cases. In *Northern Potato Traffic Asso. v. C. & A. R. R. Co.*, 44 I. C. C., 426, we reached the conclusion that a rental charge of \$5 during the winter season had not been "shown to be unreasonable." A similar finding had previously been made in *Rental Charges for Insulated Cars*, 31 I. C. C., 255. More recently we had under consideration in *Perishable Freight Investigation*, 56 I. C. C., 449, 484-488, a proposed charge of \$5 per car per trip for a refrigerator or fully insulated car, when furnished for the movement of a long list of specified perishable commodities. These commodities were selected upon the theory that the freight rates or ratings thereon were not predicated upon the use

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of refrigerator or fully insulated cars. In our advice to the Director General of Railroads in regard to this proposed charge we said:

But a carrier is entitled to reasonable compensation for the service which it performs, and if it is obliged to provide special equipment for the safe transportation of any particular class of freight, it may properly give that fact due weight in fixing its charges. Where insulated cars are necessary for the carriage of perishable freight, compensation may be secured in one of two ways—either through the line-haul rate or by levying a separate charge. In our opinion the first method is desirable, for simplicity and convenience and because it accords with present practice, where special equipment is ordinarily required for safe transportation throughout the year or a greater portion of the year; but a separate charge is preferable when the reverse is the case, both to avoid unlawful discrimination and also to discourage the use of the more costly cars when they are not reasonably necessary.

and again:

We can not see our way clear to approve the blanket rule proposed. Restating our views: Where insulated cars are ordinarily required for safe transportation throughout the year, or the greater part of the year, compensation should be secured through the line-haul rates. Where this is not the case, a special charge is preferable; but such a charge should be fairly proportioned to the extent and cost of the service furnished.

We pointed out that the proposed charge was unsupported by evidence of cost and fairly open to the criticism that it remained constant whatever the length of haul or time consumed en route. The charge now under attack is subject to the same infirmities, and to the further criticism that it is assessed during the season when the evidence shows that insulated cars are usually necessary for safe movement and is not assessed during the portion of the year when other types of equipment can frequently be employed.

But we are here considering this charge only in so far as it is applicable to certain long-haul movements, and it is a charge which we have passed upon and sustained in previous decisions. The burden of justifying it is not upon defendants. Having these circumstances in mind we are not persuaded, unsatisfactory as the charge is in certain respects, that it has been shown to be unreasonable by the evidence of record.

Subsequent to the hearing the complaint in No. 11164 was further amended to bring in issue the charges collected on shipments of potatoes moved from and to the points mentioned in the original complaint between December 22, 1919, and February 29, 1920. No evidence has been adduced with reference to these shipments, or as to the fact of damage with respect to the shipments covered by the original complaint. This case will be assigned for further hearing on the question of reparation.

An order for the future will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 1291.
 PROPOSED INCREASED RATES FROM AND TO EL PASO
 AND RELATED POINTS.

Submitted March 14, 1921. Decided May 10, 1921.

1. Proposed increased rates from El Paso, Tex., to north Pacific coast points found not justified.
2. Proposed increased rates to El Paso, Tex., and related points from points in mountain-Pacific group found justified in part. Suspended schedules ordered canceled without prejudice to the publication of schedules in conformity with the findings herein.

J. P. Wahle, J. L. Stewart, H. H. McElroy, W. C. Barnes, and B. F. Seggers for respondents.

F. C. Tockle and A. W. Norcop for El Paso Chamber of Commerce, protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATTCHISON, AND EASTMAN.

By DIVISION 3:

By schedules filed to become effective February 1, 1921, respondents proposed to transfer certain points in Nebraska, Colorado, New Mexico, South Dakota, and Wyoming, lying east of the boundary between western and mountain-Pacific groups as defined in *Increased Rates, 1920*, 58 I. C. C., 220, from group J to group G, and to restore El Paso, Tex., to the group-H basis of rates in transcontinental tariffs naming rates to the north Pacific coast. Upon protest of the El Paso Chamber of Commerce these schedules were suspended until July 1, 1921. Subsequently respondents were permitted to file supplements restoring to group J all points which they had proposed to transfer to group G, and our order of suspension was to that extent vacated.

By other schedules filed to become effective in February and March, 1921, respondents propose to establish certain increased commodity rates to El Paso and related points from defined points in southern Wyoming, western Colorado, and northern New Mexico, in the mountain-Pacific group. These schedules were also suspended until July 1, 1921.

The rate situations will be considered separately.

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RATES FROM EL PASO TO THE NORTH PACIFIC COAST.

For many years prior to August 26, 1920, El Paso and other points in Texas and Oklahoma, comprising transcontinental group H, took the same rates to the north Pacific coast. On that date respondents made effective the increases authorized in *Increased Rates, 1920, supra*. From El Paso, a border point between the mountain-Pacific and western groups, the rates to the northwest coast were increased 25 per cent. From other group-H points they were increased 33½ per cent. This resulted in taking El Paso out of group H as well as in disturbing the class-rate parity which previously existed between El Paso and Chicago, Ill. Under the suspended schedules the rates from El Paso to the north Pacific coast will be increased 33½ per cent over the rates in effect on August 25, 1920, thereby restoring El Paso to group H.

As justification for these increases, respondents rely upon *Increased Rates, 1920, supra*, where we said, at page 247, "territorial boundaries hereinbefore recognized should be observed." They also refer to the increases made in the southbound rates from the north Pacific coast to El Paso, effective January 10, 1921, which had the effect of bringing about increases amounting to 33½ per cent over the rates in effect prior to August 26, 1920, instead of 25 per cent, as made effective on that date.

Protestant objects to the restoration of El Paso to the group-H basis, amongst other reasons, because it will increase the spread in favor of Colorado and Utah points and place El Paso upon the same basis of rates as applies from more distant points in eastern Texas and in Oklahoma, and also upon a basis the same as or higher than that applicable from New Orleans.

Respondents appear to rely almost wholly upon their contention that under the words above quoted they might have applied an increase of 33½ per cent instead of 25 per cent in August, 1920. Without passing directly upon whether or not this might have been done at that time, it should be observed that the evidence in that proceeding was taken a year ago and the rates then established have been in effect for eight months. El Paso is several hundred miles west of any other points of importance in group H. There is no showing of any material competition between it and points in group H, or of any necessary relationship in the rates. On the other hand, protestant encounters stronger competition from Deming, N. Mex., Pueblo, Colo., and other points which were subject to increases of 25 per cent under *Increased Rates, 1920*, and contends that undue prejudice to it will result if the protested rates become effective. On traffic from the north and east El Paso is not grouped with other

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points in group H, but pays materially higher rates. The routes from El Paso to the north Pacific coast territory lie almost wholly within the mountain-Pacific group, as to which increases of 25 per cent were approved.

We find that respondents have not justified the schedules here under consideration and they should be canceled.

RATES FROM MOUNTAIN-PACIFIC GROUP TO EL PASO AND RELATED POINTS.

The boundary between the western and mountain-Pacific groups passes through Denver, Colorado Springs, Pueblo, and Trinidad, Colo., which are Colorado common points, and thence follows the line of the Atchison, Topeka & Santa Fe to El Paso. Prior to August 26, 1920, a number of points lying west of that boundary took rates which were the same as, or slightly higher than, the rates from Denver and other Colorado common points to El Paso and related points. On the above date the rates to El Paso and related points from these Colorado common points and other points in the western group were increased 35 per cent, while the rates from points lying across the boundary in the mountain-Pacific group were increased 25 per cent to El Paso and 33½ per cent to Texas destinations east thereof. This resulted in disturbing the former rate relationship and created a number of fourth section departures. From all the originating territory there is but one route to El Paso that does not cross into the western group. In the items under suspension respondents propose to make effective rates which represent a 35 per cent increase over the rates in effect on August 25, 1920. Protestant submitted comparisons to show that certain of the proposed rates from points in western Colorado and northwestern New Mexico which now take rates in excess of the Denver rate will be but slightly under, and in some instances in excess of, the rates from Salt Lake City, Utah.

We find that where the rates from the points here considered to El Paso and related points were on August 25, 1920, the same as the rates from Denver and other Colorado common points, respondents have justified the increased rates here under suspension.

We further find that where the rates on August 25, 1920, were in excess of the rates from Denver and other Colorado common points to El Paso and related points, respondents have not justified the proposed increased rates, but have justified rates increased to the extent necessary to obviate fourth section departures which would otherwise directly result from application of the increased rates found justified in the last preceding paragraph, or which were cre-

ated by the increased rates authorized in *Increased Rates, 1920, supra*. As the points from and to which the proposed increased rates so found justified will apply can not be determined upon this record, respondents will be required to cancel the items under suspension, without prejudice to the filing of schedules establishing, on not less than 15 days' notice, rates in conformity with our findings herein.

An appropriate order will be entered.

No. 11368.

JARECKI CHEMICAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
RAILROAD COMPANY, ET AL.

Submitted February 16, 1921. Decided May 10, 1921.

Rates on nitrate of soda, in carloads, from New York, N. Y., and points taking the same rates, and Baltimore, Md., to Sandusky, Ohio, and from Baltimore to Ivorydale, Ohio, found unreasonable. Reparation awarded.

S. J. Bolton for complainant.

Adams Dodson for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATTCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the manufacture of fertilizer, by complaint seasonably filed, as amended, alleges that the rates charged by defendants on certain carloads of nitrate of soda, shipped on and after June 25, 1918, from New York, N. Y., and points taking the same rates, and Baltimore, Md., to Sandusky, Ohio, and from Baltimore to Ivorydale, Ohio, were and are unreasonable, unjustly discriminatory, and unduly prejudicial in that they have exceeded and exceed rates applicable to certain other sodas. We are asked to prescribe reasonable and nondiscriminatory rates for the future and to award reparation. Rates will be stated in cents per 100 pounds, and do not include the general increase of 1920. Reference to rates from New York, except import rates, will be understood to include those from points taking the same rates. Import rates were not published from some of the points which take the same domestic rates as New York.

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The shipments were imported and used by complainant in the manufacture of fertilizer. Prior to June 25, 1918, defendants maintained import rates of 18.5 and 15.5 cents from New York and Baltimore, respectively, to Sandusky, and 18 cents from Baltimore to Ivorydale. Ivorydale is within the switching limits of Cincinnati, Ohio, and takes the same rates. On that date all import rates were canceled pursuant to general order No. 28 of the Director General of Railroads, and the fifth-class domestic rates, governed by the official classification, became applicable. The class rates from New York and Baltimore to Sandusky were 35 and 32 cents, respectively, and from Baltimore to Ivorydale, 36 cents. On December 24, 1918, and January 6, 1919, domestic commodity rates of 28 and 25 cents from New York and Baltimore, respectively, to Sandusky, and of 28.5 cents from Baltimore to Ivorydale, were established.

Complainant asks for rates of 25.5 and 22.5 cents from New York and Baltimore, respectively, to Sandusky, and 25.5 cents from Baltimore to Ivorydale, based on the New York-Chicago percentage scale of class rates, under which Sandusky is a 78 per cent rate point and Ivorydale 87 per cent. Baltimore takes a differential of 3 cents under New York.

The rates sought were established on July 1, 1920, subsequent to *General Chemical Co. v. Director General*, 57 I. C. C., 222. In that case the complainants attacked the fifth-class base rate of 45 cents and the subsequently established commodity rate of 36 cents on nitrate of soda from New York to Hegewisch, Ill., a Chicago rate point, and also the fifth-class rate of 36 cents from Baltimore to Ivorydale. We found the rates from New York to Hegewisch unreasonable to the extent that they exceeded 33 cents, the rate contemporaneously applicable on domestic sodas, and the rate from Baltimore to Ivorydale unreasonable to the extent that it exceeded 87 per cent of the rate prescribed from New York to Hegewisch, less the usual port differential under New York. In that connection we said:

While we have not before us the base rate between New York and Chicago, the rate which we here find reasonable between New York and Hegewisch, a Chicago rate point, may be a proper base rate with relation to which rates to other points in central territory should be made.

It is shown that from time to time after June 25, 1918, commodity rates on nitrate of soda considerably lower than the class rates, but relatively higher than the former import rates, were published from various ports to points in central territory. The distance from Baltimore to Sandusky is 596 miles. The rate of 22.5 cents is compared with the contemporaneous rate on nitrate of soda in the same amount applicable from St. Louis, Mo., to Sioux City, Iowa, 562 miles.

Defendants were represented at the hearing, but submitted no evidence.

We find that the rates assailed were unreasonable to the extent that they exceeded rates of 25.5 cents per 100 pounds from New York and points taking the same rates, and 22.5 cents per 100 pounds from Baltimore to Sandusky, and 25.5 cents per 100 pounds from Baltimore to Ivorydale; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No order prescribing future rates is necessary.

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No. 11403.
NESTLE'S FOOD COMPANY, INCORPORATED,
v.
MOBILE & OHIO RAILROAD COMPANY ET AL

Submitted December 27, 1920. Decided May 10, 1921.

Rates on evaporated milk, in carloads, from points in Wisconsin and Indiana to New Orleans, La., and Mobile, Ala., for export, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Gilroy & Townsend for complainant.

Charles J. Rixey, jr., H. L. Walker, C. B. Northrop, and Frederick H. Behring for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was argued orally.

Complainant is a corporation manufacturing milk food products with principal office in New York, N. Y. By complaint seasonably filed it alleges that the rates charged by defendants on 60 carloads of evaporated milk shipped during January, February, and March, 1917, from points in Wisconsin and Indiana to New Orleans, La., and to Mobile, Ala., for export, were unjust, unreasonable, and unduly discriminatory in violation of sections 1, 2, and 3 of the act to regulate commerce, in comparison with lower export rates contemporaneously maintained from the same points of origin to Atlantic and Pacific ports. We are asked to award reparation. Rates will be stated in cents per 100 pounds, and do not include increases subsequent to June 24, 1918.

The following table shows the points of origin, distances over routes of movement, rates charged, and rates subsequently established:

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From—	To—	Distance.	Rate charged.	Rate effective Mar. 20, 1917.
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Delavan, Wis.	New Orleans, La.	1,047	43	32.5
Do.	Mobile, Ala.	966	43	32.5
Sheridan, Ind.	New Orleans, La.	910	25	28.5
Albany, Wis.	do.	977	43	36.5
Do.	Mobile, Ala.	991	43	36.5
Reedsburg, Wis.	New Orleans, La.	1,040	54	36.5
Do.	Mobile, Ala.	1,048	54	36.5
Middleton, Wis.	New Orleans, La.	1,104	54	36.5
Do.	Mobile, Ala.	1,012	54	36.5

During the world war complainant contracted with agents of the British government to supply a large quantity of evaporated milk, for delivery f. o. b. vessels in this country, the allocation of vessels and designation of ports to be made by the British ministry of shipping. Both before and after January, 1917, complainant's shipments were made through the ports of New York, Baltimore, Boston, and Philadelphia, but at about that date the British ministry of shipping began to allocate space through Mobile and New Orleans. Certain southern carriers advised the British ministry of shipping and complainant that the rates through New Orleans and Mobile would be reduced to meet the rates then applying through the north Atlantic ports and that application would later be made to us for authority to refund to the basis of the lower rates.

Effective March 20, 1917, joint commodity export rates on the Baltimore basis were published to Mobile and New Orleans, but in the meantime these shipments, except two hereinafter mentioned, had moved and charges thereon were collected at the applicable joint commodity domestic rates. Two shipments from Reedsburg to Mobile appear to have been made on March 20, 1917, and to have been charged the domestic rate. Any overcharges thereon should be refunded promptly.

Complainant compares the ton-mile earnings under the rates established March 20, 1917, ranging from 6.3 to 7 mills, with earnings of from 4.9 to 7 mills on burlap bags, beer, and beer tonics, in carloads, from Chicago, Ill., and Milwaukee, Wis., to New Orleans and Mobile, for export, of 5.4 mills on evaporated milk, in carloads, from Albany to San Francisco, Calif., 2,231 miles; and of 5 mills from Chicago and Milwaukee to Key West, Fla., for export to Cuba. The shipments, most of which were in refrigerator cars, weighed from 40,000 to 87,500 pounds, and the car-mile earnings were from 16.4 to 34.3 cents. The average ton-mile earnings were 8.82 mills under the rates charged, and 6.62 mills under those subsequently established.

Defendants contend that there is no transportation, commercial, or geographical reason for application of the New York or Baltimore rates to New Orleans and Mobile, and that the rates charged were reasonable.

We find that the rates assailed were not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

No. 11690.

DEWEY FUEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CINCINNATI NORTH-
ERN RAILROAD COMPANY, ET AL.

Submitted January 6, 1921. Decided May 10, 1921.

Rate on coal, in carloads, from mines in Kentucky in Louisville & Nashville group No. 1 to Jackson, Mich., found not unreasonable or unjustly discriminatory. Complainant not shown to have been damaged by reason of any undue prejudice that may have existed. Complaint dismissed.

John C. Graham, for complainant.

William Burger, for Louisville & Nashville Railroad Company and Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATTCHISON, AND EASTMAN.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, alleges that the rate of \$2.20 charged on coal in carloads, shipped late in 1918 and early in 1919, from Kona and other points in Kentucky in Louisville & Nashville group 1 to Jackson, Mich., was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded \$2.10. Reparation only is asked. Rates are stated in amounts per net ton and do not include the general increase of 1920.

The shipments originated at mines in the inner Crescent described in *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66, and moved over the Louisville & Nashville and the Cincinnati Northern, 508 miles. In that case we fixed a differential of 40 cents between the rates from the Ohio and the inner Crescent districts and found the
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rates to Jackson unduly prejudicial to the extent that they exceeded by more than 25 cents the rates contemporaneously maintained to Toledo. We also found that the then existing rates to Jackson were not unreasonable, and, subject to the prescribed relationship, approved increased rates to Jackson and other points. Rates were readjusted accordingly and immediately prior to June 25, 1918, were \$1.80, \$1.70, and \$1.55, from Louisville & Nashville group 1 to Jackson, Detroit, and Toledo, respectively.

The increased rates effective on that date departed in varying amounts from the prescribed differentials both as between destinations and points of origin. The new rates from group 1 were \$2.20 to Jackson; \$2 to Detroit; \$1.85 to Toledo in connection with the Cleveland, Cincinnati, Chicago & St. Louis; and \$1.90 in connection with the Baltimore & Ohio. Effective August 10, 1918, the rate of \$1.85, which defendants state was erroneously published, was increased to \$1.90. Subsequent to June 25, 1918, the rate to Jackson exceeded the rate to Toledo by 30 or 35 cents, according to the route, from group 1, and by 50 cents from the Ohio district. Prior to June 25, 1918, the rates generally were lower from the inner Crescent than from the outer Crescent. Some of the lines serving the inner Crescent increased their rates on that date by 30 cents while certain other lines, including the Louisville & Nashville, established the same rates as those contemporaneously established from the outer Crescent. A general revision of the coal rates in this territory, instituted by the Director General of Railroads, resulted in some increases and some reductions. Effective August 15, 1919, the rates from Louisville & Nashville group 1 were made \$2.05 to Detroit and \$2.15 to Jackson. Complainant contends (1) that the rate assailed conflicted with our order in *Bituminous Coal to C. F. A. Territory, supra*; and (2) that an increase of more than 30 cents on June 25, 1918, was not authorized by general order No. 28 of the Director General.

The complaint is based solely on the relationship existing during the period in question between the rates to Jackson and to Toledo and certain other points in that general territory. Complainant does not attack the present rate and offered no evidence to show that the rate charged was excessive. Defendants show that the latter rate, distance considered, compared favorably with numerous other rates, including those from various mines in the inner Crescent to points in Illinois, Indiana, and Michigan. For example, the rate effective June 25, 1918, from the Pittsburgh district to Chicago, Ill., applying over routes averaging approximately 484 miles, was \$2.50.

Complainant's contention that the rate attacked conflicted with our order in *Bituminous Coal to C. F. A. Territory, supra*, is untenable.

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Our order in that case had not expired when the rates were increased by the Director General, but on May 27, 1918, we entered a general order which provided:

* * * That all outstanding orders of this Commission heretofore entered and unexpired, which prescribe a fixed differential, arbitrary, or other difference as between points and localities, be, and they are hereby, modified so as to permit the carriers defendant in said cases to make effective * * * freight rates on June 25, 1918, not in excess of those specified in said General Order No. 28, with the understanding that the relationship prescribed in said orders will be promptly restored. * * *

Defendants assert that variances in complying with general order No. 28, were due to different forms of supplement employed in publishing the increased rates. They offered evidence that the increase in the rate assailed was authorized and required by that order, and that if complainant's interpretation of the order had been adopted the resulting rates would have disrupted the group adjustment to a materially greater extent than did the rates actually established.

We find that the rate attacked was not unreasonable or unjustly discriminatory, and that it is not shown that complainant has been damaged by reason of any undue prejudice that may have existed. The complaint will be dismissed.

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No. 9297.

PROCTER & GAMBLE DISTRIBUTING COMPANY ET AL.
v.
ALABAMA CENTRAL RAILWAY ET AL.

Submitted February 9, 1921. Decided May 9, 1921.

Upon complaint alleging that the rates on soaps, washing, cleansing, and soap powders, and scouring compounds, from Cincinnati, St. Bernard, and Ivorydale, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill., to destinations in the southeast are unreasonable and in contravention of the fourth section, *Found*:

1. As a whole, these rates as readjusted January 1, 1916, are not unreasonable.
2. Rates to junction points in northern Florida from the Ohio, Kentucky, New York, and New Jersey points of origin named are unreasonable. Measure of reasonable maximum rates prescribed.
3. Fourth section features discussed.

Luther M. Walter, John S. Burchmore, R. P. Buchanan, and D. R. Sherwood for complainants.

Nelson W. Proctor, Charles J. Rixey, Henry Thurtell, and Charles D. Drayton for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Exceptions were filed by complainants to the report proposed by the examiner.

On January 1, 1916, following our reports and orders in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 32 I. C. C., 61, hereinafter referred to as the *Southeastern Case*, defendants canceled their any-quantity rates on soaps, washing, cleansing, and soap powders, and scouring compounds, to destinations in southern territory from points north and west thereof, and established in lieu thereof commodity rates on carloads and less than carloads. Complainants, manufacturers of or dealers in soap and related articles, allege that these commodity rates are unreasonable and also in violation, in certain respects, of the provisions of section 4 of the act to regulate commerce. We are asked to establish just and reasonable rates for the future. Rates are stated in cents per 100 pounds, and, unless otherwise shown, are those in effect on June 24, 1918.

The complaint is directed mainly against the less-than-carload rates, it being asserted that the larger part of the soap business in

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the southeast, which was built up on the any-quantity basis, moves in small quantities. To use the language of counsel for complainants, "If the Commission thinks there ought to be a carload and less-than-carload rate, that is, that there should be no any-quantity rates, we will admit that the present difference between carload and less than carload is reasonable and fair, and we do not challenge that adjustment." Neither do complainants seek to disturb the established relation that the shipping points or gateways bear to each other.

The complaint was filed prior to federal control, and was not amended to include the Director General of Railroads as defendant. Complainants ask that the issues be considered as of June 24, 1918, subject to the changes effected by general order No. 28 of the Director General, and subsequent changes of a general nature.

By order of February 26, 1917, this proceeding was consolidated with No. 9516, *Southeastern Rate Adjustment*, and a general investigation was instituted by us with respect to class and commodity rates maintained since January 1, 1916, in the southeast. The general investigation was subsequently discontinued. Defendants rely upon the evidence in that investigation which was more comprehensive than that in the instant proceeding. In so far as such evidence is relevant it will be considered here.

The points of origin named are Ivorydale, St. Bernard, and Cincinnati, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill. Ivorydale and St. Bernard are within the switching district of Cincinnati; and Port Ivory, Weehawken, and Jersey City, within the lighterage district of New York, N. Y. Cincinnati and New York will be referred to hereinafter as the points of origin in these respective groups. The destinations are all points in the states of Kentucky, Tennessee, Mississippi, Louisiana, Alabama, Georgia, and Florida. The rates assailed from New York are the water-and-rail rates applicable via Norfolk, Va., the south Atlantic ports of Charleston, S. C., Savannah and Brunswick, Ga., and Jacksonville, Fla., and the Gulf ports of Mobile, Ala., and New Orleans, La.

Complainants' shipments of the commodities here considered aggregate about 150,000,000 pounds annually to points in southern territory. A large part of the movement consists of common yellow soap, in bars, which generally takes the same rates as the other commodities named. Therefore only the rates on soap will be discussed. Soap is a desirable article of transportation in that it is of heavy weight density, is shipped in compact boxes of wood or fiber, and may be easily stored in cars with other freight. Claims for loss of or damage to shipments are negligible.

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The issue is practically limited to the propriety of maintaining carload and less-than-carload rates on soap to points in the south-east, and to the reasonableness of such rates as compared with the former any-quantity rates.

The history of the ratings on soap in the southeast is detailed in *Williams Co. v. Hartford & New York Transportation Co.*, 48 I. C. C., 269. It will suffice here to state that at the time of complaint herein the southern classification provided no specific carload rating on soap or related articles. Laundry soap, washing and scouring compounds were rated sixth class, any quantity. Soap was and is rated fifth class in carloads in official and western classifications, and rule 28 and fourth class, respectively, in less than carloads. Since this complaint was filed, a carload rating of sixth class and a less-than-carload rating of fourth class in southern territory were established in consolidated classification No. 1, effective December 30, 1919. In commodity tariffs published in February, 1908, the valuation of 5 cents per pound was applied to laundry soap, and the shipper was required to declare in writing at the time of shipment that the actual value did not exceed that amount. In October, 1915, all these related articles were accorded the soap rate and the valuation was increased to 12 cents per pound, and, subsequent to the hearing, was increased to 20 cents.

Originally there was little, if any, production of manufactured articles in southern classification territory and practically no jobbing of traffic brought from outside sources. But with the development of the south and the expansion of its commerce there has been a continuous trend toward the establishment from and to points in that territory of carload and less-than-carload rates. In 1908 the southern classification provided carload ratings on only 773 commodities. In 1915 the number had increased to 2,331.

For years complainants have made "drop" shipments; that is, shipments, generally of small quantities, direct from the factory to the retail grocer, invoiced through a jobber, who collects from the grocer. Complainants assert that southern jobbers are neither financially able nor possessed of sufficient storage facilities to handle carload shipments, and they urge the restoration of the former basis of any-quantity rates.

For many years prior to January 1, 1916, commodity rates were maintained on soap from New York and other eastern cities and from the Ohio and Mississippi river crossings to certain so-called basing points in southeastern territory. The basing points were usually served by two or more rail carriers, and some of them were also served by water carriers. The through rates to near-by destinations were usually made up of the basing-point rates plus the local

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class rates, and this basis was used with respect to destinations intermediate to the base points, as well as those beyond. In constructing through rates to Georgia nonbasing points the class-R rates of the railroad commission of Georgia were generally used, and to such points in other states the sixth-class rates were used. The principal departures from that practice were made by the Central of Georgia and Atlantic Coast Line. The predecessor of the Central of Georgia established through rates in 1887 from the east to certain stations, based on differentials over Atlanta, Ga., which applied if less than the combinations on the different basing points. Through rates to local points on the Atlantic Coast Line were established in 1908 based on differentials over the basing points, which action was taken because of complaints brought by various communities against the adjustment then in effect.

The general basis for rates to Mississippi Valley territory was sixth class, except where the combination on certain depressed points made less. Defendants assert that the rates from St. Louis, Louisville, and related points to Memphis, Tenn., and other Mississippi River crossings and to the Gulf ports were forced to a low level because of water competition; that the rates to various interior points, particularly Jackson and Meridian, Miss., were also depressed, due to former competitive conditions and the proximity of Jackson to the Mississippi River; and that because of the low rates to the depressed points commodity rates were maintained to all interior points. Class rates were applied from New York and other eastern cities to destinations in Mississippi Valley territory, and it is insisted by defendants that these rates were also forced to a low level because of competitive conditions. Practically all shipments to this territory originate at Cincinnati and other western manufacturing points. The principal movement from the east is to Memphis and New Orleans. Shipments to the latter point move by water.

In connection with the general readjustment following our order in the *Southeastern Case*, the rates on soap were revised. The former any-quantity rates to the basing points, increased by small amounts in many instances, were adopted as a basis for the carload rates, and the less-than-carload rates were made on an average of 130 per cent of the carload rates thus obtained. Complainants contend that the former any-quantity rates should have been continued as the less-than-carload rates, and that the carload rates should have been made proportionately lower. Defendants stress the water competition existing prior to 1916, which resulted in the establishment of low rates. They also insist that the former any-quantity rates to the basing points were unreasonably low, even for carload shipments;

that they could not establish the former rates to the intermediate points without numerous sacrifices in their revenue; and that the soap traffic was not contributing its just proportion of the transportation earnings. It is stated that these increases are offset by reductions at many intermediate points; but this must be understood as referring only to the carload rates. While there were many reductions in carload rates to the intermediate points, complainants insist that these principally affected the smaller towns receiving comparatively few carload shipments. It appears that out of a total of 3,081 carload rates to 483 points in Mississippi Valley territory the average increase was but 0.05 cent. Defendants' exhibits purport to show that east of Mississippi Valley territory the average carload rates constitute slight reductions from the former any-quantity rates. The average increase in less-than-carload rates to common points in Alabama, Georgia, Kentucky, Mississippi, and Tennessee was, from Cincinnati, 4.57 cents, and from New York, 6.42 cents.

The following table, compiled from defendants' exhibits, shows the rates on soap in effect prior to February 1, 1905, those effective on that date, and those effective on January 1, 1916, from New York and Cincinnati to representative interior southern competitive points. For comparative purposes the fourth and sixth class rates effective on January 1, 1916, are also shown.

To—	From New York.						From Cincinnati.					
	Prior to Feb. 1, 1905.	Effective Feb. 1, 1905.	Effective Jan. 1, 1916.				Prior to Feb. 1, 1905.	Effective Feb. 1, 1905.	Effective Jan. 1, 1916.			
			Soap (c. l.)	Soap (c. c. l.)	Fourth class.	Sixth class.			Soap (c. l.)	Soap (c. c. .)	Fourth class.	Sixth class.
Atlanta, Ga.....	Cts. 35	Cts. 30	Cts. 32	Cts. 41	Cts. 81	Cts. 54	Cts. 32	Cts. 27	Cts. 29	Cts. 38	Cts. 68	Cts. 46
Athens, Ga.....	35	30	32	41	81	54	32	29	31	41	70	48
Albany, Ga.....	34	29	32	41	81	54	35	35	34	43	85	58
Chattanooga, Tenn.....	35	30	32	41	81	54	29	29	23	30	47	33
Macon, Ga.....	32	29	31	40	78	53	32	29	29	38	68	46
Milledgeville, Ga.....	32	29	31	40	78	53	34	31	31	41	73	49
Montgomery, Ala.....	35	31	37	48	85	57	32	32	32	41	79	47
Newman, Ga.....	42	38	32	41	85	57	41	35	33	42	75	51
Opelika, Ala.....	35	31	37	48	85	57	35	31	33	42	76	52
Rome, Ga.....	35	30	32	41	81	54	32	27	29	38	68	46
Selma, Ala.....	35	31	37	48	85	57	32	32	32	41	79	47
Dalton, Ga.....	35	30	32	41	81	54	31	27	29	38	67	45
Birmingham, Ala.....	35	35	37	48	85	57	24	24	29	38	68	46
Americus, Ga.....	34	29	32	41	81	54	35	35	34	43	84	58
Columbus, Ga.....	35	30	32	41	81	54	35	31	33	42	76	52
Cordale, Ga.....	34	29	32	41	81	54	35	35	34	42	85	58
Dothan, Ala.....	47	37	39	51	88	59	55	44	33	47	92	61
Dublin, Ga.....	32	28	31	40	78	53	35	35	34	42	85	58
Eufaula, Ala.....	35	30	32	41	81	54	35	31	33	42	76	52
Hawkinsville, Ga.....	32	28	31	40	78	53	35	35	34	42	86	58
Valdosta, Ga.....	34	29	32	41	81	54	38	38	36	45	92	61
Thomasville, Ga.....	34	29	32	41	81	54	38	38	36	45	92	61
Oscar, Ala.....	47	37	39	51	88	59	53	47	38	47	92	61

The carload rates established on January 1, 1916, to the above-named basing and common points are much lower than the corresponding class rates, and are generally lower than the any-quantity rates in force prior to February 1, 1905.

Complainants and defendants submitted numerous and elaborate exhibits which have received careful consideration. As stated, complainants seek restoration of the old basis, and insist that if the establishment of carload and less-than-carload rates was desirable, defendants, instead of increasing the former rates and basing the carload rates thereon, should have established the former any-quantity rates to apply on less than carloads and have based their carload rates thereon. We are unable to accept this view. Class and commodity rates which complainants deem reasonable are proposed, although class rates are not directly in issue in this proceeding.

The rates to junction points in northern Florida are alleged by complainants to be unreasonable as compared with rates to points in southern Georgia. They cite carload rates from Louisville to 10 of these Florida junction points which, for an average distance of 740.5 miles, average 42.5 cents. The average rate for the average distance of 711 miles to Quitman, Thomasville, and Valdosta, junction points in southern Georgia, is 36 cents. The Florida rates violate the principle that as distance increases the earnings per ton-mile should decrease. From New York to 11 junction points in Florida the average rate is 36.8 cents, while the average rate to representative junction points in southern Georgia is 32 cents. Via certain routes through Jacksonville most of the Florida junction points are intermediate to the Georgia junction points. It appears that the transportation conditions over the routes through northern Florida are substantially similar to those prevailing on the routes through southern Georgia. The record warrants a finding that the relatively higher rates to the Florida junctions are unreasonable.

Complainants also insist that the use of full combinations of rates to and from the farther distant point to make the rate to the intermediate point where fourth section relief has been granted was not proper and, in many instances, resulted in unreasonable rates; that as to points to which in the *Southeastern Case* we found the rates to be subnormal and granted fourth section relief we should now determine, solely for fourth section purposes, what would be the normal rates, which rates should be observed as maxima at all intermediate points. While we are not to be understood as criticizing the principle sought to be invoked, we can not accept the result urged upon us. Complainants determine their proposed fourth section base rates by a mere reference to the rates for comparable distances between other points which they denominate normal points, stating that "a point

is normal until the Commission has granted relief, when it becomes subnormal"; and they insist that their exhibits demonstrate that these so-called subnormal points are not subnormal. Doubtless there are many subnormal rates in the country as to which we have never been petitioned for fourth section relief, so that the mere fact that no such relief has been granted as to a particular rate does not prove that that rate is normal. Evidence was not submitted concerning the transportation conditions in connection with traffic to the so-called normal points, and it has not been demonstrated that the level of the rates to these points is not affected by subnormal rates in the same general territory. We are unable to conclude upon the evidence that our finding in the *Southeastern Case* as to these rates was incorrect.

The determination of the fourth section base rates above described would fix the maxima only for intermediate points on the direct lines. It is our practice in according fourth section relief to circuitous lines to confine it to those the length of which exceeds that of the direct line by 15 per cent or more. In the *Southeastern Case* we limited the relief accorded to the circuitous lines by prescribing a maximum scale of distance class rates to be observed at intermediate points. Defendants assert that the principles followed and relationships observed in the class-rate adjustment, as between points of origin and between points of destination, have been their guide in making commodity rates on soap. Complainants contend that this scale was excessive, and as a substitute therefor propose that the circuitous line be accorded relief only to the extent that its line exceeds 114 per cent of the direct line; e. g., if the circuitous line is 117 per cent of the direct line, its maximum rate to be observed at intermediate points may not exceed its rate to the farther distant point by more than 3 per cent. The assignment of 114 per cent as the determining factor seems to be purely arbitrary, and we can not upon the record say whether that level would accord relief to the full extent merited.

Complainants' evidence does not warrant any modification of the fourth section relief granted the carriers in the *Southeastern Case* further than has heretofore been made by decisions in other cases such as *Memphis-Southwestern Investigation*, 55 I. C. C., 515, and *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, 55 I. C. C., 648. In the *Southeastern Case* we considered a large number of fourth section applications with respect to rates to and from points in the southeast. The following specific relief was granted: From New York rates lower than to intermediate points were authorized to south Atlantic ports, Charleston, Savannah, Brunswick, and Jacksonville; to Gulf ports, Pensacola, Fla., Mobile, and New Orleans;

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to certain interior points such as Memphis, Augusta, Macon, Milledgeville, Hawkinsville, Dublin, and Columbus, Ga., Montgomery, Eufaula, Selma, Demopolis, and Tuscaloosa, Ala., all of which are located on navigable rivers; and to Rome, Ga., Birmingham, Ala., Meridian, and Jackson. From the Ohio River crossings similar relief was authorized to south Atlantic ports, to Gulf ports, to lower Mississippi River crossings, to Augusta, Macon, Columbus, Montgomery, and Selma; and from St. Louis and Chicago to Gulf ports and lower Mississippi River crossings. Complainants contend that the fourth section relief granted in the *Southeastern Case* was exceeded by defendants in readjusting their rates pursuant to that decision; that the present rates, in some instances, violate the aggregate-of-the-intermediates provision of the fourth section, and in others, the long-and-short-haul provision; that relief granted at certain points has been extended by defendants to include additional points; and that defendants have in some instances increased the spread of rates between certain points in violation of our order. One of complainants' exhibits purports to set forth all of these violations. It is observed that many of the situations pointed out are not in violation of the interstate commerce act, as complainants have used as factors all-water rates or intrastate rates, which are not subject to the provisions of that act. In many instances complainants' criticisms seem to be well founded. Defendants will be expected to remove promptly such departures as are not covered by applications on file with us or authorized by outstanding orders.

Defendants detailed the history of the rates to all points involved, and made numerous comparisons intended to show their reasonableness. Much evidence was introduced to refute complainants' contention for any-quantity rates and their showing as to the amounts of the increases made in the revision of January 1, 1916.

In readjusting rates to a large territory, especially where the rate structures have been very complex, it is probable that some dissatisfaction will arise. The evidence warrants the belief that, generally, the measure of charges on carload shipments is approximately the same as, and on less-than-carload shipments more than, the measure formerly in effect. We conclude that the increased rates as a whole are not unreasonable and that the record does not warrant condemnation of the entire readjustment.

We find that defendants' rates on soaps, washing, cleansing, and soap powders, and scouring compounds, of declared or agreed value not in excess of 20 cents per pound, from Louisville, Ky., Cincinnati, Ohio, and related points, to Tallahassee, Monticello, Live Oak, Jasper, Lake City, Greenville, Madison, Quincy, Perry, and Capitola, Fla., are and for the future will be unreasonable to the extent that

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they exceed or may exceed, distance considered, the rates contemporaneously maintained from the same points to Quitman, Thomasville, or Valdosta, Ga. We further find that defendants' water-and-rail rates from Port Ivory, N. Y., and Weehawken and Jersey City; N. J., on these commodities of the value specified are and for the future will be unreasonable to the extent that they exceed or may exceed to Lake City, Live Oak, and Jasper, Fla., the rates contemporaneously maintained to Valdosta, Ga.; to Madison, Greenville, and Perry, Fla., the rates contemporaneously maintained to Quitman, Ga.; to Monticello and Capitola, Fla., the rates contemporaneously maintained to Thomasville, Ga.; and to Tallahassee, Quincy, and River Junction, Fla., the rates contemporaneously maintained to Bainbridge, Ga.

An appropriate order will be entered.

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No. 11028.

LAKE SUPERIOR PAPER COMPANY, LIMITED, ET AL.

v.

DIRECTOR GENERAL, AHNAPEE & WESTERN RAILWAY
COMPANY, ET AL.

Submitted October 14, 1920. Decided May 11, 1921.

Relationship of rates on newsprint paper, in carloads, from Sault Ste. Marie, Ontario, Fort Frances, Ontario, and manufacturing points in Wisconsin and Minnesota to destinations in the west and southwest found unduly prejudicial. Nonprejudicial relationship prescribed.

Borders, Walter & Burchmore and William W. Collin, jr., for complainants.

Thomas L. Phillips for Minnesota & Ontario Paper Company and Fort Frances Pulp & Paper Company, Limited; and C. R. Hillyer and W. D. Hurlbut for Wisconsin Traffic Association, interveners.

O. W. Dynes for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATTCHISON, AND EASTMAN.

EASTMAN, *Commissioner*:

This case brings in issue the propriety of the relationship, as between points of origin, of the carload rates on newsprint paper from Sault Ste. Marie, Ontario, hereinafter called the Soo, Fort Frances, Ontario, and shipping points in Wisconsin, Minnesota, and the upper peninsula of Michigan to destinations in Wisconsin, Illinois, Minnesota, Iowa, Missouri, Arkansas, South Dakota, Nebraska, Kansas, Oklahoma, Texas, and Colorado, and to Shreveport and New Orleans, La., and Memphis, Tenn. The complaint, filed November 17, 1919, as amended, alleges in substance that the rates from the Soo are relatively higher, mileage and operating conditions considered, than the rates from the other origin points, and that the adjustment is unduly prejudicial to the producers of newsprint paper at the Soo. The reasonableness of the rates is not in issue. The Wisconsin Traffic Association, representing manufacturers of pulp and paper in

the Fox River and northern Wisconsin groups and in Michigan, the Minnesota & Ontario Paper Company of International Falls, Minn., and the Fort Frances Pulp & Paper Company, intervened to protect their respective interests. Rates will be stated in amounts per 100 pounds and do not include the general increases authorized by us on July 29, 1920.

The points in Wisconsin and Minnesota from which paper is shipped are grouped, as a rule, for rate-making purposes. The basic group comprises points along the Fox and Wisconsin rivers in eastern and central Wisconsin and is referred to herein as the Fox River group. Menasha and Nekoosa mark the southern boundary and Marinette and Merrill the northern boundary, and the points where newsprint paper is produced include Menasha, Neenah, Kimberly, Appleton, and Combined Locks on the Fox River, and Port Edwards, Grand Rapids, Stevens Point, Rothschild, and Merrill on the Wisconsin River. The rates from these points are generally the same to all except near-by destinations. North and west of this group is the so-called northern Wisconsin group, including Eau Claire, Ladysmith, Park Falls, Tomahawk, and Rhinelander, Wis., and Quinnesec, Mich. The rates from this group are frequently the same as from the Fox River group, and the average distances from the two groups to the destinations in question usually differ by less than 100 miles. Farther to the west is the Minnesota group, including Sartell, Little Falls, Brainerd, Grand Rapids, and Cloquet, Minn. The average distances from the Minnesota group are from 180 miles less to 280 miles more than from Fox River group, and the rates vary from 3 cents under to 9.5 cents over Fox River.

In addition to these three general groups there are shipping points not within any group. Newsprint paper is produced at International Falls and at Fort Frances immediately opposite on the Canadian side of the Rainy River; also at Groos and Manistique, in the upper peninsula of Michigan, and at the Soo. To a substantial portion of the destination territory the rates from International Falls and Fort Frances exceed those from the Fox River group by 2.5 cents or less. The distances range from 200 to nearly 400 miles over those from the Fox River group, except to certain destinations in Iowa, South Dakota, and Minnesota, where the differences are less. The distances from the Soo are, roughly, from 250 to 300 miles greater than the distances from the Fox River group and the difference in rates is usually 6.5 or 7.5 cents.

The principal market for newsprint paper manufactured in Wisconsin, Michigan, and Minnesota is in the southern and western

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territory covered by this complaint. During the year ended June 30, 1919, 92,918 tons, or 86 per cent, of the production by mills of the Wisconsin Traffic Association moved to points within that territory. In 1919 the mills at International Falls and Fort Frances shipped 88,046 tons of newsprint paper to various points in the United States, of which 86,865 tons moved to the same territory and 1,181 tons to points in central territory. More than one-half of the production at the Soo is marketed in central territory, but there is a substantial movement to western and southern points. The average daily production of the mills in the different groups is stated as follows: Soo, 225 tons; Fox River, 305 tons; northern Wisconsin, 125 tons; Minnesota, 223 tons; International Falls and Fort Frances, 375 tons; and Groes and Manistique, 50 tons each.

The mills in Wisconsin along the Fox and Wisconsin rivers were the first in this western territory to manufacture paper. Subsequently, about 1900, mills were constructed in Minnesota. The plant at International Falls, which is the largest in Minnesota, was opened in 1910. The manufacture of newsprint paper at the Soo began in 1912. Prior thereto that plant had been engaged in the manufacture of wood pulp, which it sold to mills in Minnesota and Wisconsin. The production of newsprint paper in Wisconsin was then approximately 1,000 tons daily, but with the elimination in 1912 and 1913 of the import duties on paper manufactured in Canada, the production in Wisconsin, Minnesota, and Michigan diminished while that in Canada increased materially. The present combined output of the mills in Wisconsin, however, far exceeds that of the Soo.

Under normal conditions competition between the manufacturers of newsprint paper is keen. It is the practice of newspaper publishers to contract with the manufacturers for their annual supply of paper. The contracts vary from a few hundred tons to 25,000 tons and over per year, and as the paper is sold f. o. b. mill a difference of a few cents between the rates from different producing points is a matter of importance to the manufacturers in securing the contracts. There is little difference between the mills in quality of product. At the time of the hearings the competition between the manufacturers was less than normal, as the demand for newsprint paper exceeded the supply, but this condition was regarded as temporary.

In their analysis of the rate adjustment complainants have selected 58 points as representative of the destination territory. An exhibit was introduced showing in detail the rates on newsprint paper from each point where it is manufactured to each of the 58 destinations, with distances over short-line workable routes. The

average rate and distance from each origin group were then determined, following which the destinations were likewise assembled into groups and the rates and distances again averaged. What complainants term the Chicago group will serve to illustrate. The points selected by complainants and placed in that group are Chicago, Joliet, and Rockford, Ill., and Racine, Wis. The rate from the Fox River group to Chicago is 12.5 cents and the average distance is 226 miles. The rates from the northern Wisconsin and Minnesota groups are 15 and 19 cents and the average distances 331 and 513 miles, respectively. The rate from International Falls and Fort Frances is 20 cents and the average distance 633 miles, while from the Soo the rate is 19 cents and the distance 475 miles. The rates and average distances to the other points in the Chicago group were ascertained in like manner and averages figured for the group as a whole. It is shown that to the Chicago group the average distance from the northern Wisconsin group is 103 miles more than the average distance from the Fox River group and that the rate is 2.5 cents higher. From the Minnesota group the excess in distance is 278 miles and in rate 6.5 cents. From the Soo the excess in rate is also 6.5 cents for an added distance of 257 miles. From International Falls the corresponding figures are 7.5 cents and 395 miles. By plotting the curve of the ton-mile earnings of the rates from the other origin points, complainants show graphically that earnings of 8 mills from the Soo would correspond, distance considered. A rate of 18.6 cents, or but 0.4 cent less than the present rate, would yield 8 mills, therefore it is concluded that the rate from the Soo to the Chicago group is properly related to the rates from the competing mills. To Milwaukee the rate is 7.5 cents higher from the Soo than from the Fox River group and the distance is 249 miles greater, while the rate from International Falls is 10.5 cents higher for an added haul of 402 miles. The relationship between the rates to Milwaukee is also deemed satisfactory.

The gravamen of the complaint is that the rates from the Soo, compared with the rates from the basic Fox River group, as a rule reflect the added haul in greater degree than do the rates from other origin points, although the transportation conditions do not differ materially. The relative adjustments to representative destinations are shown in the following table compiled from exhibits of complainants.

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	Average distance.	Average rate.	Average ton-mile revenue.	Average excess over Fox River group.	
				Distance.	Rate.
To Chicago, Joliet, Racine, and Rockford from—	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>
Fox River group.....	240	12.5	11.9	.....	.....
Northern Wisconsin.....	313	15	9.6	103	2.5
Minnesota group.....	498	19	7.8	278	6.5
International Falls.....	605	20	6.6	395	7.5
Groes.....	311	15	9.6	101	2.5
Manistique.....	357	16	9	147	3.5
Soo.....	467	19	8.1	257	6.5
To Davenport and Dubuque from—					
Fox River group.....	265	15.5	11.7	.....	.....
Northern Wisconsin.....	346	15.5	9	81	.....
Minnesota group.....	419	19	9.1	154	3.5
International Falls.....	601	20	6.7	336	4.5
Groes.....	404	16	7.9	139	.5
Manistique.....	451	17	7.5	186	1.5
Soo.....	562	22	7.8	297	6.5
To Bloomington, Decatur, Quincy, St. Louis, and Springfield, Mo., from—					
Fox River group.....	403	20	9.9	.....	.....
Northern Wisconsin.....	506	20	7.9	103	.....
Minnesota group.....	613	21.5	7	210	1.5
International Falls.....	768	22.3	5.9	355	2.8
Groes.....	521	20	7.7	118	.....
Manistique.....	567	21	7.7	164	1
Soo.....	677	26.5	7.8	274	6.5
To Des Moines, Fort Dodge, Moberly, and Ottumwa from—					
Fox River group.....	432	21.5	10	.....	.....
Northern Wisconsin.....	486	21.5	8.8	54	.....
Minnesota group.....	435	21.5	9.9	3	.....
International Falls.....	624	22.5	7.2	192	1
Groes.....	571	21.5	7.5	139	.....
Manistique.....	618	21.5	7	186	.....
Soo.....	728	29	8	296	7.5
To Kansas City, St. Joseph, and Omaha from—					
Fox River group.....	559	28	8.9	.....	.....
Northern Wisconsin.....	609	25	8.2	50	.....
Minnesota group.....	532	28	9.1	17	.....
International Falls.....	741	26.5	7.2	182	1.5
Groes.....	702	26	7.4	143	1
Manistique.....	748	26	7	189	1
Soo.....	858	32.5	7.6	299	7.5
To Memphis and New Orleans from—					
Fox River group.....	924	35.5	7.7	.....	.....
Northern Wisconsin.....	1,021	38.3	7.5	97	2.8
Minnesota group.....	1,175	37.8	6.4	251	2.8
International Falls.....	1,297	37.8	5.8	373	2.8
Groes.....	1,039	38.5	7.4	115	3
Manistique.....	1,085	38.5	7.1	161	3
Soo.....	1,196	40.5	8.5	271	15
To St. Paul from—					
Fox River group.....	248	14	11.3	.....	.....
Northern Wisconsin.....	196	12.2	12.4	1 48	1 1.8
Minnesota group.....	131	9.2	14	1 177	1 4.8
International Falls.....	314	12.5	8	66	1 1.5
Groes.....	335	14.5	8.7	87	.5
Manistique.....	352	15	7.9	124	1
Soo.....	492	19	7.7	244	5

¹ Average under Fox River.

The above table shows that the average distances from the Soo to the destinations named vary from 244 to 299 miles in excess of the distances from the Fox River group and that for these differences in distances the average rates are higher by from 5 to 15 cents. To points where the average distances from International Falls exceed those from the Soo, excepting points in the Chicago group, the average rates from International Falls are from 2 to 12.7 cents lower than
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from the Soo. For example, to upper Mississippi River crossings, Davenport and Dubuque, the rate from International Falls exceeds the rate from the Fox River group by 4.5 cents for an added distance of 336 miles, while from the Soo the rate is 6.5 cents higher and the excess in distance is 297 miles. The discrepancies are still more pronounced in the case of the rates to points in the St. Louis group and to Memphis and New Orleans. The rates from the Soo to Memphis and New Orleans are made on combination while joint rates are maintained from International Falls and other producing points. Comparisons similar to the above could be made between the rates from the Soo, on the one hand, and from Groos and Manistique on the other. The rates from those points, however, are of relatively little importance to complainants.

It appears from the record that when the mill at International Falls first began the manufacture of newsprint paper the rate to Chicago was made 6 cents higher than that from the Fox River group to reflect the added haul of 407 miles. The rate to St. Louis was made 2 cents over the Fox River rate for the additional distance of 373 miles, and to Kansas City and lower Missouri River points up to and including Omaha, 1 cent over Fox River for added distances of from 123 to about 200 miles. These differences were not changed until June 25, 1918, when they were increased by the application of general order No. 28 of the Director General of Railroads. The Minnesota & Ontario Paper Company and the Fort Frances Pulp & Paper Company urge that the relationship which existed prior to general order No. 28 be restored. The rates from the Soo to Chicago, St. Louis, and Missouri River points were originally made 6 cents over the corresponding Fox River rates for an average additional distance of less than 300 miles. If the rate from International Falls to St. Louis should not exceed the Fox River rate by more than 2 cents, as interveners urge, it would logically follow that the excess in rate from the Soo should be at least no more, unless the movement from the Soo is conducted under less favorable transportation conditions. No substantial dissimilarity in operating conditions is disclosed; on the contrary they are much the same.

The mill at the Soo is adjacent to the tracks of the Algoma Central & Hudson Bay. Cars loaded with paper for delivery at points in the destination territory embraced in this complaint are switched by that carrier to the joint interchange yards of the Canadian Pacific, the Duluth, South Shore & Atlantic; and the Minneapolis, St. Paul & Sault St. Marie (the Soo line) and thence across the river to St. Mary's Transfer, Mich., where they are placed in trains for movement over the Duluth, South Shore & Atlantic or the Soo line. A charge of 38 cents per ton, or 1.9 cents per 100 pounds, is

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assessed by the initial switching lines and absorbed by the road-haul carriers. The mills at International Falls and Fort Frances are served by the Minnesota, Dakota & Western, a short line affiliated with the Minnesota & Ontario Paper Company. The Minnesota, Dakota & Western delivers the traffic to the Minnesota & International or the Big Fork & International Falls and for this service receives from the line-haul carriers 1 cent per 100 pounds.

Defendants offered little evidence of assistance in determining the proper relation of rates from the various producing points. Comparisons were submitted for the purpose of showing that the rates from the Soo are not unreasonable *per se* and are properly related to the rates from the Fox River group; it is urged that the operating conditions in the upper peninsula of Michigan, through which traffic from the Soo moves, are such as to justify the present spread. Nothing was said as to the propriety of the relationship between the rates from the Soo and from International Falls.

We have considered the relationship between the rates from the Soo and from the Fox River group in three cases. In *Rates on News Print Paper from Sault Ste. Marie*, 26 I. C. C., 13, we found that the carriers had justified rates from the Soo to Missouri River points 6 cents over the rates from the Fox River group. In *Lake Superior Paper Co. v. D., S. S. & A. Ry. Co.*, 30 I. C. C., 403, the propriety of the difference of 6 cents between the rates from the Soo and from the Fox River group to Chicago and other points in Illinois and to St. Louis was under consideration. We held that the difference should not exceed 5 cents and made the suggestion that to the more distant Missouri River points involved in the earlier proceeding it should be reduced to 4 cents. The carriers failed to follow that suggestion and another complaint was filed alleging that the rates from the Soo to representative consuming points west of the Mississippi River were unreasonable and unjustly discriminatory to the extent that they exceeded the rates from the Fox River group by more than 4 cents. *Lake Superior Paper Co. v. M., St. P. & S. Ste. M. Ry. Co.*, 42 I. C. C., 109. Upon the record there made we found that the complaint had not been sustained.

In this later report certain changes that had taken place in the source and extent of the complainant's competition were pointed out, particularly the withdrawal of the duty on paper imported from Canada and the decreased production in Wisconsin hereinbefore mentioned. It was stated that the increased importation of Canadian paper and the decreased importation of Canadian pulp had resulted in the practical elimination of the Wisconsin mills as substantial factors in the marketing of newsprint paper. The record now before us shows that since that time other mills have been built

in Wisconsin and that certain mills formerly producing wrapping and other classes of paper are now manufacturing newsprint paper. During the year ended June 30, 1919, the mills of the Wisconsin Traffic Association, shipped 3,749 carloads of newsprint paper, aggregating 107,950 tons, to points in the United States and they are now, therefore, important factors in the newsprint paper industry.

One of the principal contentions in the former case supporting the reduction from 6 to 4 cents of the differential over the Fox River group to points west of the Mississippi River was that differences in rates as between points of origin should normally decrease as distances to points of destination increase. In discussing this contention we explained that in applying that rule of rate making it is necessary (1) that the difference in distances from competing points of origin should be substantially the same to the nearer as to the farther destinations, and (2) that the general circumstances and conditions surrounding the transportation should be substantially the same in both cases. From the record in that case it appeared that the average distance from the Soo to St. Louis was 222 miles greater than from the Fox River group and 331 miles greater to the western points named in the complaint. Those points were Omaha, Lincoln, Kansas City, Sioux City, Des Moines, Wichita, Topeka, and Sioux Falls. The record in the instant case shows that the average distance from the Soo to St. Louis is 271 miles greater than from the Fox River group and that to the same western points it is 289 miles greater, these differences in distance being substantially the same.

Complainants contend that they are entitled to rates which will yield no higher ton-mile earnings, relatively, than the carriers derive from the rates from competing points. As aforesaid, in order to determine what the earnings on traffic from the Soo should be they plot the curve of the ton-mile earnings of the rates from the various groups, and by reference to this curve arrive at a figure for the Soo's distance which is comparable with the earnings from other shipping points. From this figure they derive the rates which they contend should be applied from the Soo to each of the different destination groups. Based on the rates so obtained they claim that the differential over the Fox River group to upper Mississippi River crossings should not exceed 4.5 cents, to Peoria 3 cents, to St. Louis and eastern Iowa points 2.5 cents, and to the Missouri River and points west thereof and to Memphis and the lower Mississippi Valley 2 cents. Defendants point out that after the initial lines' charges of 1.9 cents are deducted the differential of 2 cents proposed to a large portion of the destination territory would leave nothing to be applied to the additional haul from the Soo.

In *Lake Superior Paper Co. v. M., St. P. & S. Ste. M. Ry. Co.*, *supra*, where we held that the evidence did not warrant a reduction in the differential from the Soo over the Fox River group to points west of the Mississippi River, the relationship of rates as between other originating points was not considered. In the present case the relationships as between the Soo and other points of origin are directly in issue and from the evidence here presented it is clear that if a differential of 6 cents is proper on traffic from the Soo to the Mississippi River and points west thereof, the rates from other points are improperly related to the Fox River group rates. The following table is a comparison of rates and distances to Mississippi River crossings, St. Louis and north, and to Missouri River points:

To—	Fox River group.		Northern Wisconsin group.		Minnesota group.		The Soo.		Internat. Falls-Ft. Frances.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Dubuque, Iowa.....	243	15.5	310	15.5	375	19	551	22	553	20
Des Moines, Iowa.....	294	16.5	382	15.5	492	19	582	22	644	20
Burlington, Iowa.....	383	19	471	20	496	20	663	25.5	668	21.5
St. Louis, Mo.....	458	20	585	20	707	21.5	709	25.5	891	23.5
Quincy, Ill.....	446	20	543	20	558	21.5	719	25.5	740	22.5
Average.....	306	18	455	18.2	517	20.2	653	24.5	694	21.3
Excess over Fox River.....			49	.2	148	2.2	284	6.5	325	3.3
Omaha, Nebr.....	523	25	538	25	456	25	829	32.5	647	28.5
St. Joseph, Mo.....	566	25	631	25	579	25	868	32.5	773	28.5
Kansas City, Mo.....	587	25	658	25	621	25	877	32.5	804	28.5
Average.....	559	25	609	25	552	25	858	32.5	741	28.5
Excess over Fox River.....			50		17		299	7.5	182	1.5

¹ Average under Fox River.

It will be observed that to Mississippi River crossings the average rate from the Minnesota group exceeds that from the Fox River group by 2.2 cents for an added haul of 148 miles. The average haul from the Soo is 136 miles greater than from the Minnesota mills but the rate excess over the Minnesota group is 4 cents. For an average haul 41 miles greater than from the Soo, International Falls is accorded a rate that is lower by 3.2 cents. The average haul from International Falls to the Missouri River is 182 miles in excess of the haul from the Fox River group and the rate is 1.5 cents higher. The Soo, for a haul 117 miles longer than from International Falls, has a rate 6 cents higher than International Falls. The record furnishes no justification for these disparities.

The conclusion is warranted that the adjustment from the Soo is less favorable, on the whole, than the adjustment from the other groups to many of the important consuming markets in the west and southwest, and that no differences in transportation conditions justify the relatively greater spread in the rates from the Soo. Fort

Frances as well as the Soo are in the province of Ontario in the Dominion of Canada. Under section 1 of the interstate commerce act that act applies to common carriers engaged in the transportation of property "to any place in the United States * * * from a foreign country, but only in so far as such transportation * * * takes place in the United States" and also to such transportation "but only in so far as such transportation * * * takes place within the United States." Our findings and order in this case will be made under the limitations thus defined and do not include the switching movements without the United States by which shipments from the Soo and Fort Frances, respectively, are delivered to defendants for transportation within the United States.

We find that the relationship of the rates on newsprint paper, in carloads, from the several groups and shipping points, excluding Groos and Manistique, is and for the future will be, unduly prejudicial to complainants and unduly preferential of their competitors in the territories in question to the extent that the rates for transportation within the United States from Sault Ste. Marie, Ontario, exceed or may exceed those contemporaneously in effect from the producing points or groups named by more than the following amounts in cents per 100 pounds:

To Dubuque and Davenport and points taking the same or related rates: 6.5 cents over the Fox River and northern Wisconsin groups; 3 cents over the Minnesota group; 2 cents over International Falls and Fort Frances.

To Des Moines and points taking the same or related rates: 6.5 cents over the Fox River, northern Wisconsin, and Minnesota groups; 3 cents over International Falls and Fort Frances.

To Peoria, St. Louis, and points beyond reached via St. Louis, including Shreveport, La., and points taking the same or related rates: 5 cents over the Fox River group; 4 cents over the northern Wisconsin group; 3 cents over the Minnesota group; not to exceed the rates from International Falls and Fort Frances.

To Memphis and New Orleans: 5 cents over the Fox River group; 4 cents over the northern Wisconsin group; not to exceed the rates from the Minnesota group and from International Falls and Fort Frances.

To Missouri River points, Kansas City, St. Joseph, and Omaha, and points beyond reached via those gateways and points taking the same or related rates: 5 cents over the Fox River, northern Wisconsin, and Minnesota groups; 3 cents over International Falls and Fort Frances.

No necessity is shown for a readjustment of the rates to the Chicago group, to St. Paul and other points in Minnesota, or to South Dakota and Wisconsin points.

In applying the above-mentioned differentials the Fox River group rates should be taken as the base rates. These differentials are subject to the increases authorized by us on July 29, 1920.

An appropriate order will be entered.

No. 10996.

H. F. WATSON COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ALTON & SOUTHERN
RAILROAD COMPANY, ET AL.

Submitted November 17, 1920. Decided May 13, 1921.

Rates 80 per cent of the contemporaneous sixth-class rates found reasonable for the transportation of roofing and paving tars and pitches and fuel pitch, in carloads, between points in official classification territory, except between New England and trunk line territory, where the greater part of the hauls is within New England, and locally in New England, sixth class found reasonable. Reparation denied.

Arthur B. Hayes for complainants.

Charles P. Stewart and *L. P. Day* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, POTTER, AND ESCH.

DANIELS, *Commissioner*:

To the report proposed by the examiner, exceptions were filed and oral argument has been had.

Complainants allege that the present rates on roofing and paving tars and pitches, and fuel pitch, in carloads, throughout official classification territory are unreasonable and unduly prejudicial, and ask that rates 60 per cent of sixth class be established on roofing and paving tars and pitches, and bituminous coal rates on fuel pitch. An award of reparation is asked. The rates stated herein are in cents per 100 pounds except as otherwise noted and are those in effect prior to the general increases authorized by us on July 29, 1920.

All of these commodities are rated sixth class in official classification. In central territory commodity rates substantially 80 per cent of sixth class are in effect. In trunk line territory there are many commodity rates ranging from 70 to 90 per cent of sixth class, and even higher. In New England territory the general basis is sixth class although there are certain commodity rates ranging from 2.5 cents to 9 cents below sixth class, while there are others above sixth class which defendants admit should be reduced to sixth class. The

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base rate between central and trunk line territories is approximately 90 per cent of sixth class westbound, and 73½ per cent of sixth class eastbound. The variation in the relationship of the rates to the sixth-class rates throughout the territory involved ranges as follows: Philadelphia, Pa., to various points in New York and Pennsylvania, 75 to 108.3 per cent of sixth class, averaging between 80 and 90 per cent to all points shown on the exhibit; Philadelphia to Niagara Falls, N. Y., and certain other points in that state, 85 to 97.5 per cent, averaging about 90 per cent; Baltimore, Md., to Buffalo, N. Y., and certain other points in that territory, generally 97.5 per cent; Johnstown, Pa., to Philadelphia, 100 per cent of sixth class, and to Black Rock, N. Y., and certain other points in that territory, 73.6 to 88.3 per cent of sixth class, averaging about 85 per cent; Providence, R. I., and Bridgeport, Conn., to East Boston, Mass., 2 cents over sixth class; and from Boston to Lowell and Worcester, Mass., and other points in the same territory, rates uniformly about 1.5 to 3 cents less than sixth class.

Roofing and paving tars and pitches are produced from coal tar, which is a by-product from gas plants and coke ovens. The coal tar moves to the various plants of complainants in liquid form in tank cars, is there dehydrated, and the paving tars and pitches, which represent from 75 to 80 per cent of the inbound tonnage, are shipped out from the plants in tank cars or in barrels in box cars.¹ By a further process the remaining products of the inbound coal tar are extracted in the form of creosoting oil, dye material, etc. The rates on the latter articles are higher than on tars and pitches and are not here in issue, but complainants assert that those industries will be seriously affected if the rates on tars and pitches are not so readjusted downward as to enable the roofing and paving industries profitably to develop and to consume the present surplus of coal tar. It is stated that the production of coal tar has increased from 2,014,400 barrels in 1904 and 5,139,565 barrels in 1914 in the entire country to 9,000,000 barrels in 1919 in official classification territory alone, and that during 1919 about 3,000,000 barrels, or approximately one-third of the entire production, could not be marketed, mainly because of the freight rates.

Complainants testify that roofing and paving tars and pitches are the products of an otherwise waste material; that they give at least two hauls to the carrier, one in and one out of the dehydrating plant; that the movement of tars and pitches is continuous throughout the

¹ The Barrett Company, one of the complainants, has plants at Boston, Mass.; Undercliff, N. J.; Brooklyn and Syracuse, N. Y.; Philadelphia, Pittsburgh, and Erie, Pa.; Youngstown, Toledo, and Cleveland, Ohio; Detroit, Mich.; Chicago, Ill.; and St. Louis, Mo. The crude tar moves into these and other dehydrating plants from about 200 points of production, and this number is constantly increasing.

year; that the loaded haul of the tank cars averages about 70 per cent of the entire haul; that tank cars are furnished largely by the shipper and load from 70,000 to 90,000 pounds and sometimes even higher; that inbound box cars are ordinarily loaded outbound; that these commodities load to the capacity of the car; that the tar industry contributes to the conservation of the nation's timber supply by the production of creosote oil and substitutes for wooden paving and roofing; and that the rates on tars and pitches are excessive in view of the low values of those commodities, which range from \$7.50 to \$12.80 per ton.

Complainants' exhibits show that the Barrett Company made over 4,000 carload shipments of tar and pitch during the period from June to November, inclusive, 1918. These shipments moved throughout the official classification territory, and the average rate paid between the points shown was slightly less than 13 cents per 100 pounds and the average distance about 175 miles, while rates on the basis of 60 per cent of sixth class would average about 9 cents. As illustrative of these voluminous exhibits it is shown that 611 shipments moved from various points in New York, Pennsylvania, West Virginia, Kentucky, Ohio, Indiana, Illinois, and Michigan to Cleveland, Ohio, and the exhibit shows the average distance between the points to be 196.8 miles and the average rate 13.1 cents, under which the average earnings would be about 13.5 mills per ton-mile and 61.97 cents per car-mile on an average loading of 45.85 tons. The rates requested from and to the same points, according to complainants' brief, would average about 8.4 cents, which would earn 8.5 mills per ton-mile and about 39 cents per car-mile, based on the average distance and loading shown. Many shipments shown on this particular exhibit moved from and to the same points. The average haul on the weighted basis was about 156 miles and the average rate asked for that distance would earn 10.77 mills per ton-mile and 49.38 cents per car-mile. The outbound rates from Chicago, Ill., to points in New York, Pennsylvania, and Ohio for distances of about 300 to 900 miles are shown to yield 6 to 8 mills per ton-mile and 18 to 42 cents per car-mile, while complainants ask for rates yielding 4 to 7 mills per ton-mile and 15 to 27 cents per car-mile. Many of the rates in effect from Chicago to various destinations, including New York, N. Y., are on a basis somewhat less than 80 per cent of the sixth-class rates.

Complainants urge that the rates assailed are unreasonable because they are generally higher than the rates on tar and pitch in western trunk line and southern classification territories. Coal tar is rated class D in western classification, but in western trunk line territory from Chicago to St. Louis, Mo., and to many points in Iowa, Missouri,

Kansas, Nebraska, Oklahoma, and South Dakota, the rates on tar and pitch range from 55 to 70 per cent of the class-D rates. Complainants further urge that in southern classification territory rates on tar and pitch are 15 to 40 per cent less than the rates on prepared roofing which generally takes 90 per cent of sixth class in official classification territory, and in western trunk line territory rates on tar and pitch are 22.7 to 63.6 per cent of the rates on roofing paper. Consequently, complainants insist that tar and pitch in official classification territory should take much lower rates than 90 per cent of sixth class.

In *Building and Roofing Paper and Paper Board Rates*, 52 I. C. C., 84, we prescribed as a maximum 90 per cent of sixth class on roofing paper for application throughout official classification territory except locally within New England, where sixth class was allowed to stand.

Rates on cement in trunk line and central territories are shown to range from 9.5 cents to 14.5 cents for distances similar to the average distance between complainants' points of shipment and destination, and it is also in evidence that a rate of 12.5 cents is in effect on cement for distances of 232 and 319.4 miles, indicating that in this region distance is not the controlling consideration in the construction of rates on cement. There is, however, a uniformity of cement rates in central territory on the basis of $73\frac{1}{2}$ per cent of the sixth-class scale. Complainants' contention that they should be accorded 60 per cent of sixth-class rates would, if granted, accord them in central territory a marked advantage over cement, and that in spite of the heavy movement of cement.

Numerous exhibits were introduced showing notable disparities in rates on lime, brick, plaster, gravel, crushed stone, coal, lumber, shingles, and paving blocks.

Defendants explain that the rates on lime were established primarily to carry a low grade of that commodity used to invigorate the soil, and that their establishment was intended to encourage agriculture. Certain of the rates on the other commodities are explained by defendants on the theory that they were established to encourage the industries. Complainants reply that the tar and pitch industries need similar encouragement by the establishment of rates that will enable the traffic to move and that unless some relief is granted complainants will be required to discontinue the business; in fact it is testified that one complainant has already sought to dispose of its equipment that is used for the manufacture of tar and pitch for road purposes.

In response to complainants' exhibits defendants urge that if the ton-mile earnings of about 6 mills under the rate of 27.5 cents be

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taken into consideration for the transportation of tar from Chicago to New York, about 912 miles, no unreasonableness is shown, and that complainants' claim for a rate of 22.5 cents earning 4.9 mills is certainly not well established. On the other hand, complainants point to the car-mile earnings of about 20 cents under the 27.5-cent rate and 16.46 cents under the rate asked. The rate of 27.5 cents from Chicago to New York is about $73\frac{1}{2}$ per cent of the sixth-class rate, and is one of the lowest rates on tar, inasmuch as there are many rates exhibited that are higher than the sixth-class basis. Reference is also made to *Du Pont de Nemours & Co. v. Director General*, 55 I. C. C., 499, in which we found that the sixth-class rate of \$5.10 per ton, equivalent to 25.5 cents per 100 pounds, on 12 carloads of niter cake from Carney's Point, N. J., to Norfolk, Va., 313 miles, in February, 1918, was unreasonable to the extent that it exceeded \$2.80 per ton, equivalent to 14 cents per 100 pounds, or about 55 per cent of sixth class. Complainants state that the value of niter cake is only slightly less than the value of tar and pitch, and furthermore, the prospect of regular movement between the points named was uncertain. Complainants show that while the average ton-mile earnings on all traffic on several of defendants' lines for average distances ranging from 63 miles to 209.89 miles for the year 1918 were more in most instances than on the traffic under consideration, yet the average car-mile earnings on all traffic were substantially less than on the traffic under consideration. This is principally due to the heavy loading of complainants' shipments. Moreover, in the various comparisons of average rates on all commodities with a particular commodity, the relative volume of coal and other low-grade traffic must always be allowed for.

Complainants urge that fuel pitch comes into competition with bituminous coal and therefore should have the same rates. Defendants direct attention to the fact that fuel pitch is used to some extent for foundry facings the same as ground coal and that in *Foundry Supply Mfrs. Assn. v. A. A. R. R. Co.*, 43 I. C. C., 734, we found that sixth-class rates were not unreasonable for the transportation of foundry facings in carloads between points in central territory.

Defendants testify that the rates on tar and pitch are now too low and that they should be on the basis of 90 per cent of sixth class throughout official classification territory except in New England, where sixth class should prevail. Prior to April 15, 1916, rates on tar and pitch were 90 per cent of sixth class in central territory. On that date the basis was reduced to about 80 per cent of sixth class. Defendants explain that this reduction was due to the fact that asphalt, which in many instances takes the same rates as tar and pitch, was imported through the Atlantic and Gulf ports at low

import rates. Without going extensively into the history of the rates on asphalt between New York and Chicago, it is sufficient to state that a rate of 19 cents was established on that commodity from New York to Chicago on April 15, 1916, which, plus the subsequently authorized increases, determines the present rate of 27.5 cents from Chicago to New York. It is explained that the carriers felt they could not carry tar and pitch on a higher basis than asphalt, which accounts for the establishment of the same rates on the commodities in question as applied on asphalt from Chicago to New York. While the competitive influences did not dictate the eastbound rates from Chicago to New York, yet the carriers state the same basis was established without sufficient transportation reasons. Rates to intermediate territory were adjusted accordingly.

Defendants argue that the general basis for complainants' products in New England territory is sixth class, although some commodity rates exist. They testify that prior to May, 1914, some of the sixth-class rates were as high as 40 to 50 per cent of the first-class rates, but subsequently on certain roads the sixth-class rates were reduced to 33½ per cent of first class, and finally under the Anderson scale the sixth-class rates were established on 28 per cent of the first-class scale. Defendants state that if the rates requested were established they would be lower than those in effect prior to *The Fifteen Per Cent Case*, 45 I. C. C., 303. They further argue that if uniformity is desired in New England it can best be secured by putting tar and pitch on the sixth-class basis.

Complainants further urge that tar and pitch come into competition with cement, brick, gravel, crushed stone, wooden paving blocks, and wooden articles, and that the rates on the commodities here involved are higher, distance considered, than applicable on the competitive commodities.

Complainants stress the fact that cement is susceptible to damage by water, whereas water will not injure tar and pitch, and that the claims for damage on the latter commodities have been negligible. Also it is shown that the value of cement averages somewhat higher than tar and pitch, and generally affords the carriers but one haul. On the other hand, defendants state that while the rates on cement are considerably lower than those on tar and pitch, complainants can not make a fair comparison with the rates on cement because there is no substantial competition between complainants' products and cement, and in any event the rates on cement have been subject to carrier and commercial competition not present with complainants' products. Furthermore, the volume of cement movement is enormous, even moving in trainloads. Brick, gravel, and crushed stone are considerably less valuable than complainants' products. The

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carriers explain that gravel and crushed stone especially would not move if the rates were not very low, and they further seek to justify low rates on those commodities as an aid in the construction of good roads. Complainants reply that their road-building commodities are likewise entitled to the same considerations. Complainants seek the establishment of combination rates to and from their dehydrating plants that will compare to a great extent with the transit rates on lumber. They urge that their products come in competition with wooden paving blocks for road-building purposes and wooden shingles for roofing purposes. It is pointed out particularly that the actual rates paid in some instances on paving blocks creosoted in transit range from 62 to 66 per cent of the combination of locals which in many instances are less than the sixth-class rates. Complainants specifically deny that they are asking for a transit arrangement on tar and pitch, and we are not convinced on this record that complainants' products are entitled to rates to and from the transit points that are comparable with transit rates. There is contained in crude tar and pitch a considerable percentage of creosote oil and a small percentage of dye material. This fact differentiates to a certain extent the inbound and outbound movement of tar and pitch as contrasted with lumber which is accorded transit. Defendants urge that as a rule there is no direct competition between complainants' products and the commodities cited in comparison. The direct competition of asphalt, however, which often takes the same rate as tars and pitches, is conceded; but tars and pitches are said to be used in connection with, rather than in competition with, commodities such as paving brick, wood-paving blocks, gravel, and crushed stone. It is also true that tar and pitch are used as binder materials in competition with sand or cement in building roads of brick or wood-paving blocks.

There is a marked lack of uniformity in the rates on tars and pitches, although conditions between the various points of shipment seem to be fairly comparable and to suggest the advisability of a uniform basis of rates throughout the official classification territory except that we are convinced that the basis of rates in New England should be somewhat higher than in trunk line and central territories. The basis of 60 per cent of the sixth-class rates asked by complainants would result in substantial reductions in rates on complainants' commodities throughout the whole of official classification territory. It would accord rates in central territory much lower than cement rates, and for this we see no justification of record. The difficulty in arriving at a uniform scale of rates that will be reasonable on all of these commodities is apparent, especially where the rates were constructed without regard to their rela-

tionship to the sixth-class rates. Some of this tar traffic moves at 73½ per cent of the sixth-class rates, and complainants state that rates on the basis of 80 per cent of the sixth-class rates would result in increased rates where there is the heaviest movement and a decrease in some of the rates where the movement is lightest. Furthermore, it is stated that on the 80 per cent basis one of the principal complainants herein would be required to pay more freight on its shipments as a whole than under the rates assailed. An analysis of complainants' exhibits seems to indicate that a basis of 80 per cent of the sixth-class rates, especially in trunk line and central territories, would somewhat reduce the carriers' revenues in the aggregate but not to a marked extent. Such a basis would at the same time establish a desirable uniformity. The rates assailed are shown to be so inharmonious that it has been impossible on this record to give each specific rate consideration, but a careful analysis of the whole rate situation has been made. No convincing explanations are in evidence for the higher rates suggested on the commodities under consideration. The lack of uniformity in the rate situation shown on this record resembles the disparities in the rate adjustment in *Building and Roofing Paper and Paper Board Rates, supra*. We there prescribed a uniform basis throughout trunk line and central territories. The same justification for uniformity is found on this record.

We find that the present basis of rates on roofing and paving tars and pitches, and fuel pitch, in carloads, in official classification territory is and for the future will be unreasonable to the extent that it exceeds or may exceed 80 per cent of the contemporaneous sixth-class rates, except locally within New England territory, between points in which we find that a maximum reasonable basis on the commodities named is, and for the future will be, the contemporaneous sixth-class rates. Rates between trunk line and New England territory may, however, be established on a basis not less than rates on the sixth-class basis for equivalent hauls in New England locally, provided that in each case the greater part of the haul is within New England. Reparation is denied.

An appropriate order for the future will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1322.
MINIMUM CHARGE ON LESS-THAN-CARLOAD
SHIPMENTS.

Submitted May 9, 1921. Decided May 20, 1921.

Proposed schedules stating new individual and joint minimum rates and charges for less-than-carload shipments between eastern and interior eastern points on the one hand, and points in Carolina, southeastern, and southeastern Mississippi Valley territories on the other, and new individual and joint regulations and practices affecting such rates and charges, found not justified. Respondents required to cancel the schedules under suspension.

Frank W. Gwathmey for Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, Clyde Steamship Company, Merchants & Miners Transportation Company, and Ocean Steamship Company of Savannah; and *Claudian B. Northrop* for Southern Railway Company.

R. L. Askea for Fayetteville Traffic Association, Chamber of Commerce, Fayetteville, N. C.; *Charles E. Cotterill* for Southern Traffic League; *J. L. Graham* for Winston-Salem (N. C.) Chamber of Commerce; *W. S. Creighton* for Charlotte (N. C.) Shippers & Manufacturers Association; and *W. H. Chandler* for Boston Chamber of Commerce and New England Traffic League.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND ESCH.

DANIELS, *Commissioner*:

By schedules filed to become effective April 15, 1921, and later dates, certain carriers engaged in transportation all rail, rail and water, and rail, water, and rail, between points in eastern and interior eastern territories on the one hand, and points in Carolina, southeastern, and southeastern Mississippi Valley territories on the other, proposed new individual and joint minimum rates and charges for less-than-carload shipments, and new individual and joint regulations and practices affecting such rates and charges. The effect of the proposed changes would be to apply the first-class rate for 100 pounds as a minimum charge for the transportation of less-than-carload shipments, except that for the transportation of cotton piece goods the charge would be the commodity rate for 200 pounds. These changes would result in increasing the minimum charges on the vast
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majority of less-than-carload shipments on which the present minimum is the applicable rate for 100 pounds, but not less than 50 cents per shipment. Apparently there would be no minimum so low as 50 cents on traffic between the territories under consideration. Upon protest the schedules were suspended until August 18, 1921.

No attempt was made by any rail carrier to justify or explain the changes proposed; the only witness for any respondent testified for the Clyde Steamship Company. This testimony consists principally of an explanation of the unsatisfactory divisions received by the Clyde Steamship Company out of the present joint through rates, but is hardly applicable to the other carriers by water as apparently their situations are somewhat different. It is stated that the northern and eastern rail carriers receive their full locals to the ports and that the Clyde Steamship Company absorbs all transfer charges at the ports.

It appears that all-rail rates between the territories here involved are made certain arbitraries above the water-and-rail or rail-water-and-rail rates contemporaneously in effect; and that the proposed changes in minimum charges on less-than-carload shipments between points in these territories were initiated in behalf of the water lines participating in such transportation. The matter seems to be mainly a question of divisions and of the method of rate making. No sufficient justification having been offered by the carriers for the changes proposed, they will be required to cancel the schedules now under suspension.

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No. 11279.

CHATTANOOGA COKE & GAS COMPANY

v.

DIRECTOR GENERAL, AS AGENT; DAYTON, TOLEDO &
CHICAGO RAILWAY COMPANY, ET AL.FOURTH SECTION APPLICATIONS NOS. 542, 1548, AND
3965.*Submitted March 5, 1921. Decided May 19, 1921.*

1. Rates on coal-tar oil, in tank-car loads, from Chattanooga, Tenn., to Solvay, N. Y., found unreasonable and in some instances otherwise unlawful. Reparation awarded.
2. Fourth section relief denied.

John S. Fletcher for complainant.*Charles J. Rixey, jr., Claudian B. Northrop, and H. L. Walker* for defendants.*John F. Finerty and Alex. M. Bull* for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 8, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

EASTMAN, *Commissioner*:

Exceptions to the proposed report were filed by defendants, and we have reached conclusions differing from those suggested by the examiner.

Complainant, a corporation, manufactures coal-tar products at Chattanooga, Tenn. By complaint filed February 27, 1920, it alleges that the rates charged by defendants on 33 tank-car loads of coal-tar oil shipped from Chattanooga to Solvay, N. Y., between May 8, 1918, and January 24, 1919, were unreasonable and unduly prejudicial. We are asked to award reparation and to establish a reasonable rate for the future. Rates will be stated in cents per 100 pounds and unless otherwise indicated do not include the general increases under our authorization of July 29, 1920.

Four of the shipments moved over the Southern and its connections through Hagerstown, Md., 1,012 miles, and the remainder over either the Cincinnati, New Orleans & Texas Pacific, or the Southern and the Louisville & Nashville, to Cincinnati, Ohio, and various of

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defendants' lines beyond, 927 miles via the short line. Charges were collected at the applicable joint sixth-class rates of 49 cents prior to June 25, 1918, and 61.5 cents thereafter.

Contemporaneously defendants maintained commodity rates of 29 and 36.5 cents, respectively, prior and subsequent to June 25, 1918, on like traffic from Birmingham, Ala., and grouped points to Solvay. Chattanooga is intermediate and about 148 miles nearer to Solvay than is Birmingham. On January 30, 1919, defendants established a commodity rate of 44 cents from Chattanooga and increased to that amount the rate from Birmingham via all lines under federal control, and at a later date via lines not under federal control. The departure from the long-and-short-haul provision of the fourth section of the act was protected by appropriate applications heard with this case. No evidence in support thereof was offered, and, as stated, the departure has been removed. The applications will accordingly be denied, to the extent involved.

The aggregates of the intermediate rates to and from Cincinnati were 34.2 cents prior to June 25, 1918, and 43 cents thereafter until August 26, 1920, when under the general increases authorized by us on July 29, 1920, the combination on Cincinnati became 57.5 cents and the joint rate 58.5 cents, or 1 cent higher. These departures from the provisions of the fourth section were not and are not protected by appropriate applications and therefore the joint rates were and are unlawful.

Complainant contends that the rates charged were unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect from Birmingham. It shows that defendants maintained commodity rates to Solvay on plows and various kinds of brick 5 cents lower from Chattanooga than from Birmingham, and that on fertilizer material and manufactured iron articles the rates to Solvay from both points are the same; also that the class rates from Chattanooga to Solvay are lower than from Birmingham, the sixth-class rate, applicable on coal-tar oil in tank cars in the absence of commodity rates, being 5 cents less from Chattanooga than from Birmingham prior to June 25, 1918, and 6 cents less subsequent to that date. Complainant further shows that to New York rate points lower all-rail rates apply from Chattanooga than from Birmingham on cottonseed oil, peanut, and soya-bean oil, coconut or copra oil, and palm-kernel oil, in tank cars or barrels, the rail-and-water rates on these articles being the same from both points. It is not contended that coal-tar oil competes with the vegetable oils named, and defendants assert that there are many commercial, competitive, and transportation conditions surrounding the latter class of oils that do not obtain with respect to coal-tar oil. The latter is

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a by-product derived from the manufacture of coke, and from it toluol, benzol, naphthalene, and similar oils are obtained by a refining process.

Defendants show that the rates assailed are lower than the sixth-class rates for shorter distances between numerous points on and east of the Mississippi River, also that the sixth-class rate is less from Chattanooga to Solvay than in the reverse direction. However, they admit that commodity rates lower than sixth class are quite generally in effect on this traffic where a regular movement prevails. Both before and during the shipping period complainant presented and pressed upon defendants its request for the establishment of a commodity rate not to exceed the rate from Birmingham.

Defendants produced testimony that the 29-cent rate in effect from Birmingham prior to June 25, 1918, was established February 18, 1909, and made a differential of 5 cents over the rail-and-water rate and the same as the all-rail rate on creosote oil and on coal tar and pitch. At that time the Chicago-New York rate on coal-tar oil was 30 cents, or 8 cents higher than the corresponding rate on coal tar and pitch and the same as the rate on creosote oil. By reason of various readjustments, including the increases effected under *The Five Per Cent Case*, 32 I. C. C., 325, *The Fifteen Per Cent Case*, 45 I. C. C., 303, and general order No. 28 of the Director General of Railroads, the spread became 14 cents, the rate having been increased on the oils to 41.5 cents and on coal tar and pitch to 27.5 cents. As stated, the Birmingham rate remained constant until June 25, 1918, when it was increased under general order No. 28 to 36.5 cents. Thereafter, this rate was increased to 44 cents so as to reflect, it is said, the increases granted to the northern lines under *The Five Per Cent* and *The Fifteen Per Cent Cases*, *supra*. The same rate was made applicable from Chattanooga via federally controlled lines, and later via all lines, because of the provisions of the fourth section and because it was felt that Birmingham and Chattanooga were entitled for competitive reasons to the same rate. The creosote-oil rates from Birmingham were contemporaneously increased to 44 cents. The measure of the rate was determined, it was testified, by deducting from the Birmingham-New York rate of 47.5 cents on toluol, benzol, etc., the difference of 3.5 cents obtaining between the rates on those commodities and on coal-tar oil from Chicago to New York. The distances from Chicago and Birmingham to New York are 912 and 988 miles, respectively. Defendants also mentioned numerous rates on coal-tar oil from producing points in Alabama, Missouri, Illinois, and Wisconsin to consuming points in Texas, Louisiana, Arkansas, New Jersey, New York, and Pennsylvania for similar distances with which the 44-

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cent rate does not compare unfavorably. The following are illustrative:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Madison, Ill.....	Kenilworth, N. J.....	1,051	42.5
St. Louis, Mo.....	Paterson, N. J.....	1,058	42.5
Do.....	Manville, N. J.....	1,058	42.5
Do.....	Solvay, N. Y.....	881	40.5
Do.....	Rome, N. Y.....	902	44
Carrollville, Wis.....	Solvay, N. Y.....	780	33
Do.....	Rome, N. Y.....	796	37.5
Do.....	Paterson, N. J.....	996	41.5
Do.....	Manville, N. J.....	1,016	41.5
Chicago, Ill.....	Philadelphia, Pa.....	817	39.5
Do.....	Solvay, N. Y.....	707	33

Prior to January 30, 1919, the sixth-class rates also applied on creosote oil from Chattanooga to Solvay. On that date a commodity rate of 44 cents was established on that oil from and to the same points. The rates on coal-tar oil and on creosote oil were thereby continued on a parity from Chattanooga to Solvay and made the same as the rates from Birmingham to the same destination.

We find that the rates assailed via Hagerstown were unreasonable to the extent that they exceeded 44 cents per 100 pounds, and that the rates via Cincinnati were unlawful and unreasonable to the extent that they exceeded the aggregates of the intermediate rates subject to the interstate commerce act contemporaneously in effect to and from Cincinnati. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those which would have accrued on the bases herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. Any undue prejudice that may have existed has now been removed, and it does not appear that complainant was damaged by reason of the maintenance during the period of movement of lower rates from Birmingham than from Chattanooga.

An appropriate order will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1253.
GLASS AND GLASSWARE FROM OKLAHOMA AND TEXAS.

Submitted April 16, 1921. Decided May 31, 1921.

Proposed rates on glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, in straight or mixed carloads, from certain points in Oklahoma and Texas to points in Louisiana, Mississippi, Tennessee, Kentucky, Arkansas, and Alabama, found not justified. Suspended schedules ordered canceled.

Robert N. Nash for respondents.

R. W. Ropiequet for Schram Glass Manufacturing Company and Hazel Atlas Glass Company of Oklahoma; *W. O. Allen* for Kerr Glass Manufacturing Company and Alexander H. Kerr & Company; and *Edgar Moulton* for New Orleans Joint Traffic Bureau, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

By schedules filed to become effective on various dates between December 4, 1920, and January 25, 1921, respondents propose both increased and reduced rates on glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, in straight or mixed carloads, from producing points in Oklahoma and Texas to destinations in Louisiana, Mississippi, Tennessee, Kentucky, Arkansas, and Alabama. Upon protest of Oklahoma manufacturers and the New Orleans Joint Traffic Bureau the operation of some of the schedules was suspended by us and further postponed by voluntary action of respondents until June 2, 1921. The other schedules were suspended by us until June 24, 1921.

The principal producing points are Sapulpa, Sand Springs, and Blackwell, Okla., where some of the protestants are located, and Wichita Falls, Tex. They are grouped for rate-making purposes. Rates will be stated in amounts per 100 pounds.

In *Ball Bros. Glass Mfg. Co. v. Director General*, 58 I. C. C., 331, we found that the rates on glass fruit jars, fruit-jar tops, and jelly glasses, in straight or mixed carloads, from Wichita Falls to 47 destinations in Louisiana were unduly prejudicial to the extent that they exceeded the rates on similar traffic from Blackwell, Sand Springs, and Sapulpa. No finding was made as to the reasonable-

ness of the rates. The suspended schedules were filed to comply with our order in that case.

In this proceeding the evidence is confined to destinations in Louisiana. Respondents propose a rate of 76.5 cents to apply generally from Wichita Falls and as a minimum from Blackwell, Sand Springs, and Sapulpa. The present rates from Wichita Falls are either \$1.17 or 83 cents to a majority of the destinations and 56 cents to many other points, including New Orleans. No changes are proposed in rates from the Oklahoma points except where the present rate is lower than 76.5 cents. The latter rate is said to be in effect from Oklahoma to most points in Louisiana east of Alexandria. Rates from Oklahoma and Texas have in the past borne some relation to the rates from Hillsboro, Ill., and Muncie, Ind., where competitors of protestants are located. The 76.5-cent rate proposed is related to proposed increased rates from Hillsboro and Muncie to the same territory now under suspension in another proceeding. Hillsboro has the St. Louis basis of rates. The Muncie rates are based upon the Ohio River combination. To Baton Rouge and New Orleans the proposed increased rates are 79 cents from Hillsboro and 85 cents from Muncie.

Respondents' witness testifies that in order to bring about a proper adjustment all rates from the Oklahoma points should be made the same as the proposed rates from Wichita Falls, except to Shreveport and points in Louisiana, where the so-called Shreveport scale, prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, is in effect. The schedules under suspension would establish this parity only to 26 out of 267 destinations in Louisiana, as shown by one of respondents' exhibits. Except to these 26 points, the rates from the Oklahoma points to practically all destinations in Louisiana are the fifth-class rate of \$1.17, or commodity rates of \$1.27, \$1.18, 83 cents, or 77.5 cents. In these no changes are proposed, whereas the proposed rate from Wichita Falls to the same points is generally 76.5 cents. Respondents state that steps are being taken to publish the latter rate from the Oklahoma points. The same rate of 83 cents now applies both from Wichita Falls and from the Oklahoma points to numerous destinations, and this parity will be disturbed by reducing the rate from Wichita Falls but not from the Oklahoma points. Rates on glass bottles have not been revised, although this commodity ordinarily takes the same rates as the commodities here considered. Many departures from both clauses of the fourth section would be created by the proposed rates, although one of the purposes of the revision is the removal of departures existing at the present time. Respondents ascribe these defects to lack of time and errors and oversight in publishing the tariffs. They offered no evidence as to the reasonableness of the proposed rates

other than to show that they compare favorably with the proposed increased rates from St. Louis, Mo., Alton and Hillsboro, Ill., and Muncie, Ind., also under suspension.

The short-line distance from Sapulpa to New Orleans is about 693 miles. The present rate on glass fruit jars and bottles for that distance under the Shreveport scale is 61 cents, and thus considerably less than the 76.5-cent rate proposed. Protestants suggest a rate of 61 cents for application from all the points of origin here considered to destinations throughout Louisiana, citing *Memphis-Southwestern Investigation*, 55 I. C. C., 515, wherein we referred to the similarity in transportation conditions prevailing in Oklahoma, Louisiana, and common-point territory in Texas. The average short-line distance from Sapulpa to the Louisiana destinations under consideration in *Ball Bros. Glass Mfg. Co. v. Director General*, *supra*, was there shown to be 567 miles, and from Wichita Falls 520 miles, or considerably less than the distance of 693 miles to New Orleans. To New Orleans, Baton Rouge, and many other points a rate of 61 cents would represent an increase of 5 cents over the present rates. In *Bartlett-Collins Glass Co. v. St. L.-S. F. Ry. Co.*, 56 I. C. C., 236, the Shreveport scale was prescribed on glass bottles and fruit jars from Sapulpa and Sand Springs, Okla., to points in Texas. The complainant in *Ball Bros. Glass Mfg. Co. v. Director General*, *supra*, suggested the application of that scale from Wichita Falls to Louisiana points, and we there said:

The application of this basis would result in reductions of all the class and commodity rates from all the points of origin, except in a few instances where the commodity rates from Wichita Falls would be slightly increased; would destroy the parity at present existing between the rates from the Oklahoma points; and would give Wichita Falls lower rates than from any of the Oklahoma points, on account of the shorter distances.

The protestants in the instant case were interveners in the case last cited, and in both cases they have objected to the establishment of a distance scale. Respondents oppose the establishment of the Shreveport scale or rates based thereon as being too low. The record does not warrant us in requiring establishment of the 61-cent rate suggested by protestants.

The proposed rates would undoubtedly result in violation of sections 3 and 4 of the act. Respondents admit that these rates were determined upon rather hurriedly and contain many inconsistencies.

We find that the schedules under suspension have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding, but this is without prejudice to the filing by respondents of tariffs embodying a more consistent plan of readjustment.

No. 11844.

SPEIR & McKAY

v.

DIRECTOR GENERAL, AS AGENT, LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.

**PORTIONS OF FOURTH SECTION APPLICATIONS
NOS. 488, 1548, AND 1952.**

Submitted March 5, 1921. Decided May 19, 1921.

1. Rate on cotton linters, uncompressed, from Louisville, Ky., to Atlanta, Ga., found not unreasonable or unduly prejudicial. Complaint dismissed.
2. Fourth section relief denied.

J. D. Patterson, jr., for complainant.

Charles J. Rixey, jr., and W. N. McGehee for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

By DIVISION 3:

To the report proposed by the examiner exceptions were filed by complainant.

Complainant, a corporation with its principal place of business at Atlanta, Ga., is engaged in buying and selling cotton linters. By complaint, filed March 26, 1920, it alleges that the rate of \$1.145 charged on certain carloads of cotton linters shipped from Louisville, Ky., to Atlanta was unreasonable and unduly prejudicial. Reparation is sought. Rates are stated herein in amounts per 100 pounds and do not include the general increases under our authorization of July 29, 1920.

The shipments, of which there were six, consisted of uncompressed cotton linters. They moved in June and July, 1919, over the Southern, 469 miles, and charges were collected at the rate of \$1.145, composed of the fourth-class rate of 31.5 cents from Louisville to East St. Louis, Ill., and a commodity rate of 83 cents beyond. Cotton linters, any quantity, like cotton are rated first class in the southern classification, and the first-class rate from Louisville to Atlanta in effect at the time of movement was \$1.34. By exception to the tariff naming

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the class rates, cotton and cotton linters were excluded from the application of the class rate; and the combination charged was the lowest rate available.

There is no evidence of any movement of cotton linters from Louisville to Atlanta either prior or subsequent to these shipments. Defendants urge, therefore, that the rate charged, being less than the first-class rate, was not unreasonable. They compare the rate of \$1.145 with contemporaneous combination rates and first-class rates, the latter applying generally where there is no regular movement of cotton or cotton linters. In *Meridian Cellulose Co. v. Director General*, 57 I. C. C., 283, we found under similar circumstances that the first-class rate of \$1.25 from Cairo, Ill., to Meridian, Miss., 367 miles, as a factor of the combination rate on certain shipments of cotton linters from Nobel, Ontario, to Meridian, was not unreasonable, although the commodity rate in the reverse direction was 65 cents.

The rate on cotton linters from Louisville to Atlanta was and is the same as the rate on cotton, although at the time these shipments moved the value of cotton was about 35 cents a pound and that of cotton linters from 4 to 8 cents a pound. Complainant contends that this difference in values warranted a lower rate on cotton linters than on cotton, and compares rates on cotton linters, uncompressed, ranging from 55 cents for a haul of 466 miles to 83 cents for a haul of 612 miles, including the rate of 65 cents from Atlanta to Louisville. These rates apply on both cotton and cotton linters and from points where cotton is produced to points of consumption or concentration, whereas the movement here was against the normal flow of traffic. We have approved rates on linters the same as those on cotton. *Louisiana Cotton*, 46 I. C. C., 451, 453.

The commodity rate of 83 cents from St. Louis to Atlanta, which applied also from East St. Louis, was established to enable cotton which had moved into that point from the southwest to be reshipped into the southeast in competition with cotton from the southwest through Memphis to the same destination. This rate applied over the Southern via Louisville, and the departure from the long-and-short-haul provisions of the fourth section of the act was protected by appropriate applications heard with this case. Defendants offered no justification for the departure, but stated that a number of their rates on cotton linters, including the rate from St. Louis to Atlanta, are in process of revision and that when revised the rates will conform to the fourth section. There was no evidence of undue prejudice.

We find that the rate assailed was not unreasonable or unduly prejudicial. Orders will be entered dismissing the complaint and denying the fourth section applications to the extent involved.

No. 11474.

NORFOLK FEED MILLING COMPANY, INCORPORATED,
v.
PENNSYLVANIA RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted September 29, 1920. Decided May 29, 1921.

Rates on final or blackstrap molasses, in tank-car loads, from New York, N. Y., and Philadelphia, Pa., to Norfolk, Va., found not unjust, unreasonable, or unduly prejudicial. Complaint dismissed.

Jas. G. Martin for complainant.

Edwin A. Lucas for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

HALL, Commissioner:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing stock and poultry feed at Norfolk, Va. By complaint filed May 14, 1920, it alleges that the rates on final molasses, in tank-car loads from New York, N. Y., and Philadelphia, Pa., to Norfolk are unjust, unreasonable, and unduly prejudicial in violation of sections 1 and 3 of the interstate commerce act and of section 10 of the federal control act. An award of reparation and the establishment of reasonable and just rates for the future are asked. Rates will be stated in cents per 100 pounds and do not include the general increase authorized by us on July 29, 1920.

Final or blackstrap molasses is the last run of cane molasses and is said to be unfit for human consumption. Complainant uses it in manufacturing feed for animals. The prices paid for it from January, 1919, to June, 1920, ranged from 8 to 21 cents per gallon of 11.7 pounds. All shipments received by complainant during the four years preceding the hearing, except four carloads in barrels, moved in tank cars furnished by the shippers, on which the carrier pays them a mileage allowance, and which contained from 6,000 to 8,200 gallons. Very few of the tank cars were returned under load. No claim for loss or damage has ever been filed by complainant on tank-car shipments.

The rates assailed are commodity rates of 22 cents from New York and 21 cents from Philadelphia, applicable to final molasses, in carloads, in barrels or in tank cars. Most of the shipments to com-

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plainant are made from Philadelphia. Its witness suggested as reasonable a rate of 13 to 15 cents from that point and 1 cent higher from New York. Complainant compares the rates assailed with lower rates, distance considered, on the same commodity from south Atlantic and Gulf ports to various points, and rates of 15 cents from Norfolk to Wilmington, N. C., and 20.5 cents from New York and Philadelphia to Buffalo, N. Y.; also with lower rates on other commodities, such as canned goods, cement, fertilizer, grain and grain products, cottonseed oil, plaster, and sugar, from New York and Philadelphia to Norfolk.

The rates from the several southern ports are highly competitive as between those ports, and similarity of transportation conditions is not shown. Lighterage service is necessary in New York harbor and a car-float service of 36 miles from Cape Charles, Va., to Norfolk. The 15-cent rate from Norfolk to Wilmington for 289 miles, which complainant says "is more nearly on an equitable basis," yields ton-mile earnings of 12.53 mills—higher than the 12.16 mills realized from New York to Norfolk for 362 miles, and lower than the 15.91 mills from Philadelphia to Norfolk, 264 miles. To Buffalo the sixth-class rate is applied. The short-line distance from New York is over the Delaware, Lackawanna & Western, 405 miles, and the yield 10.1 mills per ton-mile. The same rate of 20.5 cents yields 7.9 mills for the longer route of the Pennsylvania, 518 miles. The showing of lower rates on other commodities is confined to value, carload minimum, and rate. Comparisons so confined are not helpful.

Defendants contend that the sixth-class rate to Buffalo, a 60 per cent point, is depressed because controlled by the New York to Chicago scale, which in turn is influenced by competition from New Orleans. Their comparisons include rates of 12.5 cents from Jersey City, N. J., and New York to Philadelphia, for distances of 99 and 109 miles, yielding ton-mile earnings of 25.2 and 23 mills, respectively.

In the official and southern classifications final or blackstrap molasses is rated fifth class, but by exception to official classification takes sixth class in trunk line and central territories. In this movement to Norfolk it has been accorded a commodity rate of 0.5 cent under sixth class. The reasonableness of the class rates is not challenged.

The undue prejudice alleged is in the relation to rates from New York and Philadelphia to Buffalo and Erie, Pa. The record contains nothing as to Erie. Reference is made to an unnamed competitor at Buffalo, but without showing of competition or damage.

We are of opinion and find that the rates assailed were not and are not unjust, unreasonable, or unduly prejudicial. The complaint will be dismissed.

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INVESTIGATION AND SUSPENSION DOCKET No. 1280.
RAIL-AND-WATER RATES FROM ATLANTIC SEABOARD
TERRITORY TO TEXAS POINTS.

Submitted April 2, 1921. Decided May 23, 1921.

Schedules containing proposed reductions in class and commodity rates from Atlantic seaboard territory to Texas points required to be canceled without prejudice to the right of respondents to make readjustments indicated in the report to be proper.

Fred H. Wood, James R. Bell, and Frank W. Gwathmey for respondents.

Huggins, Kayser & Liddell, Paul Kayser, and J. A. Morgan for city of Houston, Houston Harbor Board, and Houston Chamber of Commerce.

William A. Glasgow, jr., and James C. Jones for Commercial Exchange of Philadelphia, Philadelphia Maritime Exchange, Philadelphia Bourse, Philadelphia Board of Trade, and Philadelphia Chamber of Commerce.

Geo. W. DeLanoy for Southern Steamship Company; and *Terry, Cavin & Mills, Frank Andrews, Dabney & King, O. S. Burg, Wharton & Himer, George T. Atkins, J. A. Brown, J. S. Hershey, Horace Booth, and E. E. Dullahan* for southwestern rail lines.

E. H. Thornton for Galveston Commercial Association; *Charles A. Bland* for Beaumont Chamber of Commerce, Beaumont Dock & Wharf Commission, East Texas Chamber of Commerce, and Port Arthur Chamber of Commerce and Shipping; *F. A. Leffingwell* for Waco Chamber of Commerce; *L. M. Shepardson* for Orange Chamber of Commerce; *S. Goodstein* for Dallas Chamber of Commerce and Fort Worth Chamber of Commerce; *U. S. Pawkett* for San Antonio Freight Bureau; *J. J. Atkinson* for Austin Chamber of Commerce; *F. C. Tockle* for El Paso Chamber of Commerce; *Frank Lyon* for Luckenbach Steamship Company; *A. E. Beck* for Merchants' & Manufacturers' Association of Baltimore; *W. H. Chandler* for Boston Chamber of Commerce, New England Traffic League, and Associated Industries of Massachusetts; *James C. Lincoln* for Merchants Association of New York; and *J. W. Bomgardner* for Trenton, N. J., Chamber of Commerce.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCORD, MEYER, AND ATTCHISON.

MEYER, Commissioner:

By schedules filed to become effective January 15, February 8, and February 15, 1921, the Southern Pacific Company-Atlantic Steamship Lines, hereinafter called the Morgan line, and the Mallory Steamship Company, hereinafter called the Mallory line, propose to reduce class and commodity rates applicable via water and rail and rail, water, and rail from New York, N. Y., and points in Atlantic seaboard territory to Galveston and Houston, Tex., and points taking same rates, and to certain points in interior Texas other than the Houston group. Upon protests filed by the city of Houston, the Houston Harbor Board, the Houston Chamber of Commerce, certain southwestern rail lines, the Southern Steamship Company, the Philadelphia Chamber of Commerce, and other commercial bodies of Philadelphia the proposed schedules were suspended until May 15, and June 8, and subsequently resuspended until June 15, 1921.

The Morgan and Mallory lines are competitors and each operates two boats a week between New York and Galveston. The Southern Steamship Company operates one boat a week between Philadelphia and Port Houston, Tex. Port Houston is located on the Houston Ship Channel, about 45 miles inland from Galveston and about 5 miles south of Houston. It is in the Houston rate group, which comprises generally that part of Texas between Orange and Houston and on and south of the Texas & New Orleans Railway. The group includes Beaumont, Port Arthur, and the Sabine district of Texas.

Seaboard territory may be defined briefly as the territory lying east of a line through Buffalo, N. Y., Pittsburgh, Pa., and Wheeling, W. Va., thence south to a point east of Bristol, Tenn., thence east to the Atlantic ocean.

The relationship between the Southern Pacific Company and the Morgan line, together with the nature and extent of the competition between the rail line and its steamship lines was fully described in our reports in *S. P. Co. Ownership of Atlantic Steamship Lines*, 43 I. C. C., 168, and 45 I. C. C., 505. The Mallory line and the Southern Steamship Company are controlled by the Atlantic Gulf & West Indies Steamship Company which owns practically all the capital stock of the two lines. The parent company owns or controls the Clyde line, the Ward line, and other Atlantic steamship lines and is the largest steamship company engaged in coastwise traffic of the United States.

CLASS RATES.

The class rates under suspension are those from interior seaboard territory to Galveston, and from New York and interior seaboard territory to Houston and group. No changes are proposed in the class rates from New York to Galveston; nor from New York or interior seaboard to points in interior Texas; although reductions would inevitably follow by combinations to many interior Texas points immediately north of the Houston group.

The present port-to-port class rates, New York to Galveston and Philadelphia to Port Houston, are the same, as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	153.5	123.5	106	92	70.5	76.5	70.5	59.5	57.5	57.5

The rates from New York to the Houston group are made certain differentials higher than the rates to Galveston. In these differentials respondents propose some change which, on New York traffic, will make them more nearly in line with the differentials which apply in making rates from Galveston higher than from Houston to interior Texas, but on interior seaboard traffic slight differences result on classes D and E. The interior Texas scale is that fixed by the Railroad Commission of Texas as increased under the successive percentage increases, and not disturbed by us in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312. The present differentials from New York and interior seaboard, those applicable Galveston higher than Houston to interior Texas points, and the proposed differentials are shown below:

Classes.....	1	2	3	4	5	A	B	C	D	E
From New York.....	20	10	8	4.5	5.5	9	5.5	8	3	3
Interior seaboard via New York.....	12	10	8.5	4.5	5.5	5.5	5.5	8	3.5	3.5
Interior Texas.....	12	10	8.5	5.5	5.5	5.5	5.5	3.5	3.5	3.5
Proposed.....	12	10	8	4.5	5.5	5.5	5.5	8	8	8

It will be noted that the present scale is higher on first class and class A and lower on classes 3, 4, C, D, and E than the interior Texas scale. The respondents state that it was the intention to observe the long established 12-cent scale on both class and commodity rates, and that where this has been departed from in connection with class rates it has been due to the necessity of holding as maxima the present rates from New York and interior seaboard, as those rates continue to apply via other lines. The proposed scale is not opposed except by Galveston interests who contend that the same scale should be used as now applies on traffic from Galveston and Houston to interior Texas points, and this, we think, is the proper basis.

Rates from interior seaboard territory to Galveston via New York are made by adding to the port-to-port rates a scale of differentials

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beginning with 49 cents first class, subject to the provision that where the combinations of locals to and from the ports make less than the through rates the combinations shall apply. Rates from interior seaboard to Houston via New York are made by adding to the rates from New York a scale of differentials beginning with 41 cents first class.

These two scales of differentials are as follows:

Classes-----	1	2	3	4	5	A	B	C	D	E
Galveston-----	49	33.5	27.5	22	20	23.5	20	18	18.5	18.5
Houston-----	41	33.5	28	23	20	20	20	18	19	19

If the rates from New York and interior seaboard to Houston and group are made higher than rates to Galveston on the 12-cent scale of differentials now applicable on interior Texas traffic no reason is seen why a uniform scale of differentials should not be made applicable, seaboard over New York, on traffic to both Houston and Galveston.

Under the present adjustment each line has the advantage of lower local rates from territory contiguous to the port it serves up to the point where such local rates approach the level of the differential scale seaboard over New York. From points where the local rail rates to the ports are equal to or in excess of the differentials the traffic may move at equal rates through New York to Galveston or through Philadelphia to Houston.

In the suspended schedules the Morgan and Mallory lines propose to substitute for the present differentials a scale beginning with 35 cents first class, which, on the first five classes, is the minimum class-rate scale in trunk line territory. The fifth-class rate in this scale is extended to the lettered classes of western classification, which governs the movement of traffic from seaboard to Texas. The rail rates to the ports would be absorbed. By using this scale the respondents would be able to move traffic from any point in interior seaboard, except Philadelphia, through New York to Galveston at as low rates as it can be moved through the port of Philadelphia to Houston, and, unless the Southern Steamship Company were to adopt the same scale, at lower rates.

The present and proposed rates from interior seaboard to Galveston and the reductions resulting from the application of the 35-cent scale are shown in the following table:

Classes-----	1	2	3	4	5	A	B	C	D	E
Present ¹ -----	202.5	162	133.5	114	90.5	100	90.5	77.5	76	76
Proposed-----	188.5	158.5	130	109.5	83	89	83	72	70	70
Reduction-----	14	8.5	3.5	4.5	7.5	11	7.5	5.5	6	6

¹ Same as present rates from interior seaboard to Port Houston via Philadelphia and the Southern Steamship Line, except where combinations of locals make lower rates.

The proposed changes will make the rates to Galveston via New York lower than the rates to Port Houston via Philadelphia by the amounts of the reductions shown in the table, except where the combination to and from Philadelphia makes less than the port-to-port rates plus the differential.

In 1907, the scale, interior seaboard over New York to Galveston and the Houston group, was uniform beginning with 15 cents first class. Through rates both class and commodity from this territory to Galveston were canceled in 1908, and rates made by combination thereafter applied. Following *The Fifteen Per Cent Case*, 45 L. C. C., 303, through rates to Houston from interior seaboard were made on a 17.5-cent scale over the rates from New York. This scale was further increased under general order No. 28 of the Director General of Railroads to a 22-cent scale. Following repeated requests from Galveston interests, through joint class rates from interior seaboard via New York to Galveston were made effective on February 29, 1920. With the establishment of these rates by the United States Railroad Administration, and over the protest of the Morgan line, the differentials interior seaboard higher than New York to Houston were made on a 31-cent scale. Under the general increase authorized by us on July 29, 1920, the scale was increased on August 26, 1920, to the present 41-cent scale. The readjustment of February 29, 1920, brought about increases in the rates from seaboard territory to Houston, but also material reductions in the rates from the same territory to Galveston. Since the establishment of the original scale of differentials, seaboard territory has been extended to include a materially greater territory, and the rates to the ports of New York and Philadelphia have been materially increased, requiring the absorption by the water-and-rail routes of much greater amounts.

The respondents urge that during and following the period of federal control, as a result in part of the several percentage increases, the relationship between rail-and-water rates from seaboard territory and all-rail rates from St. Louis and so-called defined territories based thereon to Texas points has been disturbed, and that the adoption of the 35-cent scale and the consequent reduction in rates will tend to restore a more equitable relationship than now exists and increase the amount of tonnage moving from seaboard territory via the water lines. It is urged that the number of steamers in operation between New York and Galveston has been decreased and that ships are moving not fully loaded.

Commercial organizations of Boston, New York, and Baltimore appeared at the hearing in support of the proposed schedules as tending to restore conditions formerly prevailing. It is urged that it is increasingly difficult for manufacturers and others in eastern sea-

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board territory to compete with those located at St. Louis and points basing thereon. Shipments from Baltimore are often made via New York even at higher rates because of the more frequent service. Various organizations located at points in interior Texas also appeared and urged that the suspended rates be allowed to become effective.

A decrease in the amount of tonnage over that which previously moved is a condition which is not confined to this territory or to the routes of these respondents, but is quite general throughout the country, and can not be said to be caused entirely, if at all, by an improper adjustment of rates to the points here directly involved with those of competing markets. No showing of the relative amount of tonnage moving from these competing territories has been made, and no attempt has been made to substantiate by definite comparisons the assertion that the rates are not properly aligned with rates from other points.

COMMODITY RATES.

Protests are not directed against particular commodity rates, but against the readjustment as a whole. The reductions proposed are brought about in the following ways:

(a) Rates to Galveston on certain commodities from interior seaboard are based on the class differentials lower than the existing rates to Houston and group.

(b) Rates on certain commodities from New York and interior seaboard points to Houston and group are made differentials based on the class scale higher than the rates to Galveston.

(c) Rates from interior seaboard to Galveston, by establishing certain proportional rates from New York and reducing through rates via New York, are made the same as the existing rates from the same points to Port Houston via Philadelphia and the Southern Steamship Company.

(d) Rates on certain commodities from New York via Galveston to interior Texas points are made the same as the rates in effect from Philadelphia via Houston to the same points.

(e) Rates on certain commodities from interior seaboard to interior Texas points are made the same as the rates in effect from and to the same points via Philadelphia and Houston.

There are some reductions in commodity rates in the suspended schedules which are not made under the general basis of readjustment, but are in the usual course of business. Among these are rates made to equal the combination via the route of movement; to add articles to commodity descriptions already in effect and to make rates to certain points the same as the rates to other points on the usual basis; to provide rates on certain commodities the same as the rates

on other commodities which ordinarily take the same rates; and to make rates via the Morgan line the same as rates already in effect via the Mallory line. No particular protest is made against these changes, and they should be allowed to go into effect.

On certain commodities, rates to Galveston from interior seaboard points are now made on the combination of local rates to and from the port of New York, which, in many instances, results in rates to Galveston higher than the through rates contemporaneously in effect to Houston over the same route, the traffic moving through Galveston. Rates which are proposed from interior seaboard to Galveston made differentially lower than rates to Houston via Galveston appear to be properly aligned with the rates to Houston and remove the fourth section departures. The Houston interests withdrew their protest in so far as these items are concerned.

Rates from New York and interior seaboard to Houston made differentials higher than the rates to Galveston do not appear to be objectionable so long as they are made upon rates to Galveston which are themselves not objectionable. The rates proposed, however, are in many instances based upon rates made to Galveston which will be the subject of further discussion.

Galveston interests, while approving the proposed rates generally, object to any commodity rate to Galveston or Houston which does not employ as a differential that used on the class under which the commodity is normally rated. In using the class scale of differentials as a basis for the commodity rates, respondents have adopted the rule that the differential to be used should be that which attaches to the class rate which is the same in amount as or next above the commodity rate. An equitable adjustment would require the use of substantially the same differential adjustment as is used in making rates from Galveston higher than from Houston to interior Texas points.

The remaining features of the commodity rate adjustment; that is, the establishment of commodity rates from New York via Galveston to interior Texas points which are the same as the rates in effect from Philadelphia via the Southern Steamship Company and Houston, rates from interior seaboard via New York to Galveston the same as via Philadelphia to Port Houston, and rates from interior seaboard points to interior Texas points the same as via Philadelphia and Port Houston, together with the proposed change in the class rates, are the subject of the most emphatic protest on the part of the protestants.

Respondents urge that the equalization of rates via different routes between the same points, and the establishment of rates from or to one point which are the same as the rates from or to another point served by competing carriers is practiced by rail lines and by water-

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and-rail lines throughout the country; that the proposed adjustment which makes the rates from New York to interior Texas points the same as the rates from Philadelphia to interior Texas points enables Texas points to make their purchases in either New York or Philadelphia, and that the equalization of rates between the same points via different routes gives to the shipping public the benefit of as many different routes as possible.

The commodity rates from interior seaboard points to interior Texas points may be divided into two classes; those lower than any possible combination of locals on the ports, made perhaps with relation to rates from St. Louis or other competitive markets, and those made on combination of local rates to and from the ports of New York or Philadelphia.

Local rates to Philadelphia from many points in seaboard territory, and more especially from points contiguous to Philadelphia, are lower than the local rates to New York. By reason of these rates the Southern Steamship Company is able to maintain lower rates from these points to Houston than the rates of the Morgan and Mallory lines from the same points to Galveston, and lower rates from these points to interior Texas points than via the Morgan and Mallory lines via New York and Galveston. Similarly there are points from which the rates via New York are lower than via Philadelphia, because of lower combinations on New York. The Morgan and Mallory lines propose to equalize via New York the combinations on Philadelphia. To this adjustment the protestants object. They insist that where the combination through one port makes less than the combination through the other, the route having the lower rate is entitled to the benefit of its location and that this rate should not be equalized. Discrimination against Houston and Philadelphia is urged on the ground that they are deprived of the benefit of their location nearer consuming and producing markets than Galveston and New York. In view of the more frequent sailings, the superior service, and shorter time in transit it is asserted that the respondents have no difficulty in competing with the Southern Steamship Company and drawing a substantial portion of traffic even at higher rates, and that they have a compensating advantage with respect to points in interior seaboard territory from which lower combination rates apply via New York. It is substantiated on the record that traffic moves through New York even at rates higher than those applicable via Philadelphia. The equalization proposed would involve the absorption of the excess of the local rates to New York over the local rates to Philadelphia, which in some instances is quite substantial in amount.

The Southern Steamship Company objects to the proposed rates on the ground that it will be unable to compete with the Morgan and
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Mallory lines operating out of New York. It states that under the present rates it derives advantages because of the location of Philadelphia near certain points of production, the rail rates from which are lower to Philadelphia than to New York, that the adoption of the minimum trunk line scale by the respondents in constructing rates from interior seaboard points over the rates from New York will enable the Morgan and Mallory lines to draw traffic from territory contiguous to Philadelphia at rates as low as or lower than those of its line, and that the equalization through New York and Galveston of commodity rates applicable via Philadelphia and Port Houston will take away traffic to such an extent that the Philadelphia-Houston line will have to be discontinued. The bulk of the tonnage to Gulf ports, it is stated, moves through New York, so that even at the present time the Southern Steamship Company has found it difficult to obtain sufficient tonnage to maintain its present service. It contends that it could meet the competition of any independent boat line as long as the existing inland rate relationship was maintained, but that it can not compete in a rate war with a railroad-owned line.

Philadelphia interests oppose the proposed schedules on the ground that they will result in drawing to the port of New York traffic now passing through Philadelphia, and will force the Southern Steamship line to discontinue and thus deprive the port of Philadelphia of a direct line to the Gulf. It is contended that the port of Philadelphia is entitled to the benefit of lower rail rates from territory contiguous to it in order to maintain its standing as a port, and that the competition of the port of New York has always been so severe that it has been impossible to establish water lines out of the port of Philadelphia which its business importance would seem to justify.

The same objection is made by the city of Houston and business interests there located. It is feared that Houston will be deprived of direct steamship service with Philadelphia should the effect of the proposed schedules be to force the Southern Steamship line to discontinue. Houston is 50 miles nearer interior Texas points than is Galveston. It has expended large sums of money in the construction of the Houston Ship Channel by means of which Port Houston is made accessible to the Gulf. It has constructed wharves, warehouses, and other facilities to build up a port. It therefore contends that these natural and acquired advantages entitle it to have traffic from Atlantic seaboard territory to interior Texas move through Port Houston as a gateway at lower rates than that moving through Galveston; on traffic from points from which the lowest combination makes on Philadelphia and Houston.

In *S. P. Co. Ownership of Atlantic Steamship Lines*, 43 I. C. C., 168, and 45 I. C. C., 505, we authorized an extension of time during which

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the Southern Pacific Company would be permitted to continue to operate or have an interest in its Atlantic Steamship Lines, operating between New York and Galveston and New Orleans. In *S. P. Co. Ownership of Atlantic Steamship Lines*, 58 I. C. C., 67, decided June 4, 1920, we denied the application of the Southern Pacific Company to operate its steamship lines in either regular or irregular service between certain north Atlantic ports, including Philadelphia, and certain Gulf ports, including Houston. We there found that the proposed service was not in the interest of the public and of advantage to the convenience and commerce of the people and would exclude or prevent competition on the routes via water. The Southern Steamship Company was then, as now, operating between Philadelphia and Port Houston.

Philadelphia and Houston interests contend that the proposed schedules are unlawful in violation of section 5 of the interstate commerce act in that the Southern Pacific Company, owning and operating the Morgan line seeks to do indirectly by these schedules what we have decided that it could not do directly, and that it will exclude, prevent, and reduce competition on the route by water from Philadelphia to Houston.

The respondents urge that our decision in the case referred to can not be construed as a limitation of the territory from which the steamship lines of the Southern Pacific Company, operating between other ports, may draw traffic, and that the competition here in issue is not on the route via water as referred to in the act, but over a different route over which it has already been authorized to operate.

The Gulf, Colorado & Santa Fe; Beaumont, Sour Lake & Western; Orange & Northwestern; St. Louis-Brownsville & Mexico; International & Great Northern; Missouri, Kansas & Texas; Missouri, Kansas & Texas Railway of Texas; and the Trinity and Brazos Valley, operating in the state of Texas, declined to participate in the reduced rates and object thereto.

They urge that a reduction in the rates from New York and points in seaboard territory to Galveston, Houston, and interior Texas points will lead to reductions in rates via all-rail routes from central freight association territory, and that while the reductions proposed are confined largely to points near the Texas ports and rates to points in the northern part of Texas are not directly affected, such points are intermediate to Galveston and Houston on traffic from central freight association territory and a reduction in rates to these points will require reduction in rates to points in northern Texas. They further urge that the proposed rates have the effect of reducing the combinations of rates to many interior Texas points, and while they have not joined in the reductions proposed, a reduction in

through rates in which they do join will be necessary in order to avoid departures from the aggregate of the intermediates clause of the fourth section; that moreover the Southern Pacific lines which reach many of the principal points in Texas join in the proposed through rates to points in interior Texas and competition would necessitate reductions in rates to competitive points.

They further state that by the equalization of rates from points tributary to Philadelphia via the Southern Pacific lines through New York and Galveston with rates via the Southern Steamship line through Philadelphia and Houston, the absorption of higher local rates of eastern lines to New York than to Philadelphia will be necessary, affecting the division of through rates received by the Texas lines; and that if the proposed rates are allowed to become effective they are apprehensive of more serious reductions and reductions on the part of the Southern Steamship Company which will result in a rate war between the steamship lines. These rail lines object to the reductions, however brought about, which will have the effect of reducing their revenue.

Some readjustment of both class and commodity rates appears from the record to be proper. The establishment of class rates from New York to Houston based upon the 12-cent interior Texas scale of differentials higher than the rates to Galveston is not objectionable. With this readjustment, we might approve the application of differentials from interior seaboard territory higher than the rates from New York to both Houston and Galveston on the basis of the 41-cent scale now applicable in connection with the rates to Houston. Commodity rates would also appear to be proper from interior seaboard territory to Galveston based on the class differentials lower than existing rates to Houston and group, and from New York and interior seaboard territory to Houston made the class scale of differentials higher than properly constructed rates to Galveston. Equalization via New York and Galveston of rates via Philadelphia and Houston where such rates are less than any combination is not improper, provided the resulting rates are not so low as to be unremunerative. Commodity rates which are made in the usual course of business as hereinbefore described are also proper in so far as the record shows.

While certain changes proposed may be proper, we are of the opinion and find that the comprehensive readjustment which the respondents propose is neither necessary nor on this record justified. An order will be entered requiring the cancellation of the suspended schedules, without prejudice to the right of the respondents to make the readjustments indicated in the report to be proper.

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No. 11568.
SWIFT & COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted February 21, 1921. Decided May 19, 1921.

Minimum charge on wet phosphate rock, in carloads, from Alafia, Fla., to Agricola, Fla., during federal control, found unreasonable. Reparation awarded.

R. D. Rynder for complainant.

John F. Finerty for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing commercial fertilizers, by complaint filed June 24, 1920, alleges that the minimum of \$15 per car exacted for transportation of certain shipments of wet phosphate rock, in carloads, from Alafia, Fla., to Agricola, Fla., between June 25, 1918, and December 5, 1919, and the rate of 20 cents per long ton, minimum marked capacity of car, charged on this traffic from the latter date to March 1, 1920, were unjust and unreasonable. The prayer is for reparation only.

The shipments moved over the Seaboard Air Line from Alafia to Agricola, about 17 miles, and the applicable charges thereon were collected, based on \$15 per car, prior to December 5, 1919, and 20 cents per long ton on and after that date. The phosphate rock after being dried was reshipped from Agricola over the Seaboard Air Line through Alafia to interstate destinations. Complainant maintains at Alafia and Agricola switching engines and crews which performed the service incident to setting out the cars at Alafia and spotting them at Agricola. The cost of this service appears, from the record, to be about \$3.25 per car.

From April 9, 1914, to June 24, 1918, a proportional commodity rate of 10 cents per long ton was applicable from Alafia on wet phosphate rock to be dried at Agricola and subsequently reshipped to interstate destinations. On June 25, 1918, a minimum charge of \$15 per car was established, and replaced on December 5, 1919, by the
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rate of 20 cents per long ton, minimum marked capacity of car. Complainant seeks reparation to the basis of the former rate of 10 cents increased by 25 per cent, or 12.5 cents.

The minimum charge of \$15 represented an increase of more than 200 per cent over the charges at the rate in effect prior to June 25, 1918. The rates from Agricola to intermediate destinations were increased 25 per cent under general order No. 28. Defendant states that the rate sought by complainant would yield less revenue per car than is obtained from the usual switching charge. Based on the average loading of 45 long tons the 12.5-cent rate would yield approximately \$5.60 per car, whereas charges for intraterminal switching movements in this territory usually are from \$5 to \$6.50 per car. The average revenue under a 20-cent rate would be about \$9 per car.

We find that the minimum charge assailed was unjust and unreasonable to the extent that it exceeded 20 cents per long ton, minimum marked capacity of the car; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued upon the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 11586.

CRUCIBLE STEEL COMPANY OF AMERICA

v.

DIRECTOR GENERAL, AS AGENT, AND BALTIMORE &
OHIO RAILROAD COMPANY.

Submitted February 25, 1921. Decided May 20, 1921.

Charges assessed on coal, in carloads, for movements at Pittsburgh, Pa., during federal control, by complainant's own power, found unreasonable. Reparation awarded.

Allen H. Kerr for complainant.

Francois R. Cross for Baltimore & Ohio Railroad Company.

Royal McKenna for Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing steel at Pittsburgh, Pa., by complaint filed June 11, 1920, alleges that the charges assessed for the movement during federal control after June 24, 1918, of 407 carloads of coal between points in complainant's plant in the city of Pittsburgh were unjust and unreasonable. The prayer is for reparation. Charges will be stated in amounts per car, except as otherwise noted.

The main part of complainant's plant is located between Smallman street and the tracks of several railroads bordering the bank of the Allegheny River. From boiler station No. 3, halfway between Twenty-ninth and Thirtieth streets, the plant extends along the river as far as Thirty-first street. Complainant has a coal-storage pile on other property near Thirty-sixth street. Three different movements are before us for consideration: No. 1, from a coal hoist between Thirtieth and Thirty-first streets to boiler station No. 3; No. 2, from the coal hoist to the coal-storage pile; and No. 3, in the opposite direction, from the coal-storage pile to boiler station No. 3. Complainant figures the distances to be 500, 3,800, and 4,300 feet, respectively. The distances as computed by defendants are somewhat longer by reason of allowances for the switching required on

complainant's tracks. The coal was hauled by complainant's engines and crews in cars furnished by the Director General of Railroads and over the Baltimore & Ohio tracks. The charges collected were those published in the tariffs with certain restrictions.

Prior to June 25, 1918, the charge for movement No. 1 was \$2, whether handled by carrier or individual power, and for the other movements \$2.50 "when handled by individual power," no charge being provided for handling by carrier power. On that date, pursuant to general order No. 28 of the Director General, the respective charges were increased by 15 cents per net ton, resulting in revenues of \$8 or more per car. The restriction on movements Nos. 2 and 3 was left unchanged. On December 26, 1918, the charge for each of the three movements was reduced to \$5, and on June 2, 1919, the charge for movement No. 1 became \$2.50 with the restriction "when handled by individual power." Reparation is asked to the bases of the \$2.50 and \$5 charges subsequently established.

The charges for similar movements in the same locality on the Pennsylvania were not increased. For intraplant switching on the Baltimore & Ohio a charge of \$2.50 was maintained prior to June 25, 1918. This was increased on that date by 15 cents per net ton, and reduced on December 26, 1918, to \$3. The latter charges were not applicable because the movements were not entirely within the confines of the same plant. In many instances movements at the \$3 charge exceeded in distance any of those performed by complainant with its own power.

We have not before us the issue of whether the passive rôle of defendants in permitting use of carriers' rails and cars by an industry with its own power in movement of its own property, is a service of transportation for which a charge could properly be provided in tariffs published under the act to regulate commerce, as amended. The movements were intrastate and our jurisdiction attaches only under section 206(c) of the transportation act, 1920, because invoked by complainant "praying for reparation on account of damage claimed to have been caused by reason of the collection or enforcement by or through the President during the period of federal control of * * * charges, * * * (including those applicable to * * * intrastate traffic) which were unjust, unreasonable, * * *."

The record shows that the reduced charges were still in the published tariffs when the complaint was filed after expiration of federal control; that these movements by complainant interfere to a certain extent with the regular movement of traffic by the carrier; that other industries besides complainant use the Baltimore & Ohio tracks in this way; and that such use is the principal item for which the

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charge is provided. We express no opinion as to the propriety or legality of tariff provisions such as those under consideration when applied to interstate shipments. *Crucible Steel Co. v. Director General*, 61 I. C. C., 655, decided May 9, 1921.

The increases assailed were part of the general plan of the Railroad Administration to provide sufficient revenues to meet increased operating expenses. The method adopted resulted in certain inequalities. It is urged that the subsequent reductions were intended to give temporary relief until a reasonable basis could be established.

We find that the charges assailed were unreasonable to the extent that they exceeded \$2.50 per car for movement No. 1, and \$5 per car for each of the other movements; that complainant made the movements as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which we find would have been reasonable; and that it is entitled to reparation in that amount, with interest. Complainant should comply with rule V of the Rules of Practice.

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WYANDOTTE SOUTHERN RAILWAY COMPANY.
SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES
OF RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-
CATION TERRITORY.

Submitted August 29, 1919. Decided May 18, 1921.

Wyandotte Southern Railway Company found to be a common carrier of property subject to the interstate commerce act which may lawfully participate in joint rates with other common carriers or have its charges on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation must not be more than is reasonable; and a complete and specific statement of any basis agreed upon must be filed with the Commission immediately upon its adoption.

Edward Donnelly for Wyandotte Southern Railway Company.
D. P. Connell for New York Central lines.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

By DIVISION 3:

The question presented is whether the Wyandotte Southern Railway Company, hereinafter called the Wyandotte, is a common carrier which may lawfully receive compensation in the form of divisions of joint rates or switching absorptions out of through rates on interstate shipments to and from points on its line.

A questionnaire addressed to the Wyandotte on May 29, 1919, and its response thereto giving additional information as to changes since June 1, 1914, in physical properties, manner of operation, compensation received, and other pertinent matters, have been made part of the record with the consent of its trunk line connections.

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The Wyandotte is a switching road, organized October 8, 1901, under the general railroad laws of the state of Michigan. Its authorized capital stock is \$25,000, all shares of which were issued in payment for property transferred to it by the Pennsylvania Salt Manufacturing Company, hereinafter called the salt company. It owns and operates in the city of Wyandotte, Mich., 1 mile of main track and 3.25 miles of spur tracks and sidings, all of standard gauge. In addition it leases 1.25 miles of yard tracks and sidings from the salt company for an annual rental of \$400. Practically all the tracks, except the 1 mile of main track, are located in and around the various buildings comprised in the plant of the salt company. The main line, over which the salt company and other industries are reached, was formerly owned by the Michigan Central Railroad, which from 1901 to 1908 switched all cars to and from the industries located thereon. This switching was done by a switching engine sent twice each day from its Wyandotte yards, a distance of about 2 miles. The only connection with other trunk lines was over the tracks of the Michigan Central. As the salt company's business increased a direct connection with all trunk lines became desirable and it purchased this main line from the Michigan Central on December 14, 1907, transferring it to the Wyandotte on February 17, 1908. Physical connection with the main line of the Detroit, Toledo & Ironton Railroad was then completed and the Wyandotte began operations on September 9, 1908.

The Wyandotte has direct track connection with the Michigan Central and the Detroit, Toledo & Ironton. Through these two connections it reaches the tracks of the New York Central and the Detroit & Toledo Shore Line Railroad. The various trunk lines are parallel to one another at a distance of about 1 mile from the industries served by the Wyandotte. The equipment owned by the Wyandotte consists of two locomotives.

It is controlled by the salt company through ownership of all shares of its capital stock except qualifying shares of the directors. The president, treasurer, and general superintendent of the Wyandotte occupy similar positions with the salt company, the first two receiving no pay from the Wyandotte and the latter receiving \$540 per annum. The railroad is operated independently of the controlling industry and separate accounts are kept.

The Wyandotte files tariffs and annual reports with us and keeps its accounts under our requirements. It is taxed under the laws of Michigan as a common-carrier railroad. It does no mail, express, or passenger business; publishes no rates for transportation of freight in less-than-carload quantities; and issues no bills of lading, the latter being issued by the connecting carriers, which also collect the freight charges.

It has no demurrage tariffs. Demurrage charges are paid under the tariffs of the trunk lines, collection being made direct from shippers or receivers of freight by the trunk lines. The salt company has executed the average agreement with the trunk lines. There is no settlement for detention of cars as between the Wyandotte and its trunk line connections. It is not a member of the American Railway Association. Its tracks are not now in excellent condition, but with exercise of due care trunk line locomotives of the type used by it could be operated over its tracks and perform switching if necessary. Trunk line power has not been used on its tracks since 1908.

The general character of the service performed is the switching of cars to and from points on its line from and to junction points with its trunk line connections. In addition to the controlling industry the Wyandotte serves the Metal & Thermit Corporation, formerly the Glaschmidt Detinning Company, and the Condensite Company of America, both of which are engaged in the manufacture of chlorine products. Neither is affiliated with either the Wyandotte or the controlling industry, and neither has independent tracks or sidings. Both are adjacent to the plant of the salt company, but the Metal & Thermit company's plant can be reached only over a short spur track belonging to the Wyandotte Terminal Railway. Industries served by the Wyandotte have no means of getting freight by rail except over the Wyandotte tracks.

Between these industries and the junctions with connecting trunk lines there is considerable vacant land available for manufacturing sites, that north of the main line of the Wyandotte belonging to the salt company and that south to the Detroit River Land Company.

The Wyandotte formerly had two team tracks assigned for the use of the general public, but the present practice is, at the shipper's or receiver's request, to place the car on the siding most convenient for loading or unloading. Ten cars were handled from team tracks in 1918.

Interstate traffic is confined to such cars as are handled in the interchange service between industries on its lines and junctions with connecting carriers. No record is kept showing what portion of the total is intrastate, but it is said not to exceed 2 per cent. From the analysis hereinafter given it will be seen that the traffic handled in interchange service for shippers independent of the controlling industry is about 4 per cent, and yields about the same percentage of the revenue.

An analysis of the Wyandotte's traffic and revenue for 1918 is given below:

	Cars.	Revenue.
Interchange service:		
Between plants of controlling industry and junctions with connecting carriers....	7,016	\$14,032.00
Between independent industries and junctions with connecting carriers.....	274	548.00
Between team tracks and junctions with connecting carriers.....	10	20.00
Total interchange switching.....	7,300	14,600.00
Plant and interplant service:		
For controlling industries.....	1,398	1,398.00
For independent industries.....	47	47.00
Total plant and interplant switching.....	1,340	1,340.00
Local switching:		
Between plant of controlling industry and team tracks, other industries, or stations.....	2	2.00
Other revenue; miscellaneous revenue for weighing cars, 25 cents each:		
For controlling industry.....	2,512	628.00
For independent industry.....	296	51.50
Total cars switched.....	8,642	15,942.00
Total cars weighed.....	2,838	709.50
Total revenue.....		16,651.50

The average length of haul for shipments moving in the interchange service both from plants of the controlling industry and from independent plants or team tracks is 1 mile, all over tracks of the Wyandotte.

The interchange service performed by it is similar to that done by the trunk lines for industries served by them in local switching, but most of the larger plants in the city of Wyandotte are served by terminal railroads. The service performed by the Wyandotte for independent shippers or receivers does not differ from that for the controlling industry or from that which would be performed if the trunk lines served the controlling industry direct. All interchanging of cars is made by the Wyandotte with the connecting carriers at the junction point distant about 1 mile from the plants of all industries served.

The Wyandotte's charge for interchange switching between points on its line and junctions with connecting carriers is \$2 per car, and is covered by tariffs on file with us. This charge was absorbed by its connecting trunk lines from September 9, 1908, to April 1, 1914. The latter then canceled the absorption. It was resumed on May 1, 1916, and still continues to the extent of \$1.80 per loaded car, upon the findings of a subcommittee appointed by the trunk lines to investigate and determine what would be a fair and reasonable allowance for such switching. Apparently the balance of 70 cents is collected from the shipper or consignee in addition to the line-haul rate. For movements which are purely plant, interplant, or local in their nature a charge of \$1 per car is made, also covered by tariff.

The Wyandotte shows a total book valuation, based on original cost, plus additions, of \$48,900.26, distributed \$30,063.58 to land and tracks, \$16,000 to equipment, and \$2,836.68, to a trestle. The value of the property used in public service is estimated at \$20,000.

Comparison is made with the absorption of \$2 per loaded car accorded another terminal switching road in the city of Wyandotte which is said to perform a substantially identical service. The Wyandotte's operating expenses for 1914 and 1918 are compared and classified on the basis of the number of cars handled in each kind of service. The total expenses apportioned to interchange service for 1914 are given as \$13,419.65, or about \$1.98 per car; and for 1918 as \$22,604.30, or \$3.095 per car. These expenses erroneously include all taxes and 5 per cent interest on the total capital invested. In the absence of some more detailed explanation the method of classifying operating expenses on the basis of cars handled can not be relied upon as accurate. The law neither provides nor contemplates that the Wyandotte shall receive compensation out of the line-haul rates that will yield a return upon the value of its carrier property. Certainly it is not entitled to such return from that source upon the value of facilities which are not used by or open to the public generally. The record does not afford adequate basis for determination of the maximum amount which may properly be paid to the Wyandotte by connecting trunk lines.

Upon the record we find that the Wyandotte Southern Railway is a common carrier of property subject to the interstate commerce act, which may lawfully participate in joint rates with other common carriers or have its charges for switching on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation must not be more than is reasonable and a complete and specific statement of any basis agreed upon must be filed with us in each instance immediately upon its adoption.

No order is necessary.

EASTMAN, *Commissioner*, dissents.

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No. 12086.

INCREASED COST OF RAILROAD FUEL, 1920.

April 4, 1921.

REPORT OF THE COMMISSION TO THE SENATE OF THE UNITED STATES
IN RESPONSE TO SENATE RESOLUTION NO. 412, ADOPTED DECEMBER 27, 1920.

BY THE COMMISSION:

The accompanying statistics relating to the increased cost of fuel to steam railroads of the United States for the year 1920 as compared with the cost for the year 1919 are submitted in response to Senate Resolution No. 412, a copy of which follows:

Resolved, That the Interstate Commerce Commission is hereby directed to ascertain forthwith and report to the Senate the increased cost of railroad fuel to the railroads of the United States for the current year over the cost of the same to them for the year 1919, and to furnish in detail a statement of the tonnage of railroad fuel this year, its total cost, its average cost per ton, and the average cost per ton of last year's railroad fuel, to the end that the difference in cost between the two years may plainly appear.

Although we obtain monthly from carriers certain information regarding the cost of fuel, it did not seem sufficiently detailed to meet the requirements of the resolution. Under date of January 4, 1921, we entered an order instituting a proceeding of inquiry and investigation in this matter. A special sworn report was required from all steam roads. The smaller roads, however, have been omitted from the following tables, as their omission does not appreciably affect the results and greatly reduces the time required for compilation. Should the results for the smaller roads be desired also, a supplementary report will be prepared. Our circular of inquiry was issued under date of January 12, and returns were required to be filed by February 15, 1921. There was a delay on the part of a number of the roads in filing the returns, and on March 31, 1921, the following roads had not complied with the requirements: Aberdeen & Rockfish Railroad Company; Alabama & Mississippi Railroad Company; Arizona Southern Railroad Company; Dayton, Toledo & Chicago Railway Company; Gulf, Texas & Western Railway Company; Nevada Copper Belt Railroad Company; Sewell Valley Railroad Company; Alcolu Railroad Company; Amador Central Railroad Company; Atlantic, Waycross & Northern Railroad Company; Blytheville, Burdette & Mississippi River Railway Company; Bowdon Railway Company; Cadiz Railroad Company; California Central

Railroad Company; Carolina & Northeastern Railroad Company; Fort Smith, Poteau & Western Railroad Company; Harrisville Southern Railroad Company; Inland Railway Company; Knoxville, Sevierville & Eastern Railway Company; Laona & Northern Railway Company; Manistee & Repton Railroad Company; Middle Tennessee Railroad Company; Moniteau Railway Company; Natchez, Urania & Ruston Railway Company; Ocklawaha Valley Railroad Company; Orangeburg Railway; Ouachita Valley Railway Company; Tampa & Jacksonville Railway Company; Timpson & Henderson Railway Company; Tuskegee Railroad Company; Valdosta, Moultrie & Western Railway Company; Warren & Saline River Railroad Company; Warren, Johnsville & Saline River Railroad Company; Washington & Choctaw Railway Company; Wellington & Powellsville Railroad Company; Willamette Valley & Coast Railroad Company; Wilmington, Brunswick & Southern Railroad Company; Dunleith & Dubuque Bridge Company; Peru, La Salle & Deer Park Railroad Company; and Port Huron Southern Railroad Company.

In regard to these delinquent roads, which operate a total of 1,032 miles, we are taking such steps as seem appropriate.

The principal results of the inquiry appear in table No. 1, submitted herewith. This table shows by territorial regions the quantity and cost of various classes of fuel purchased and delivered during the years 1919 and 1920 by the large steam roads in the United States. In giving the quantities and cost at mine the contract and spot purchases are distinguished. The cost delivered is also shown, without, however, a separation of contract and spot coal. It will be observed that for all regions the average delivered cost of bituminous coal was \$3.15 per net ton in 1919 and \$4.13 in 1920, an increase of 98 cents a ton. At the mine, the increase in the cost per ton was 66 cents for contract coal and \$1.70 for spot coal. The increases shown for the New England region differ markedly from those given above for the United States. The increase in the delivered cost for bituminous coal in the New England region was \$2.92 per net ton. The increase in the mine price of the bituminous coal purchased for this region was \$1.27 per net ton, contract, and \$3.79, spot.

Anthracite coal delivered cost the railroads 73 cents a net ton more in 1920 than in 1919. The increase in cost of fuel oil delivered was 33 cents a barrel.

The territorial regions are those for which our operating statistics are regularly compiled. The principal roads included in each are shown in table No. 2, submitted herewith.

In table No. 2 certain details are presented regarding the bituminous coal purchased by individual roads. On account of the space required this table has been restricted to the roads having annual operating revenues above \$25,000,000. The roads are arranged by regions, and in each case the quantity and average price is shown by producing districts for each of the years 1919 and 1920.

TABLE No. 1.—Quantity and cost of fuel purchased by class I steam roads in the calendar years 1920 and 1919, by territorial regions.
 [Class I roads are those having annual operating revenues above \$1,000,000.]

Bituminous coal.											
Region and year.	Quantity in net tons purchased and delivered during year.				Total cost delivered.	Total cost at mine.			Average cost per net ton.		
	Contract purchases.	Spot purchases.	Total.	Contract purchases.		Spot purchases.	Total.	Delivered.	At mine.		
										Contract.	Spot.
New England.....	4,028,518	3,346,028	7,374,541	815,115,872	\$20,307,472	\$35,423,044	\$8.09	\$6.35			
1919.....	3,753,109	1,017,323	5,469,391	9,231,145	3,861,066	13,092,211	5.17	2.46			
Great lakes.....	19,488,748	5,068,569	24,557,312	68,107,463	20,422,979	88,530,441	4.34	4.01			
1919.....	15,922,076	2,645,804	18,567,880	38,278,766	7,648,986	45,927,752	3.27	2.60			
Ohio-Indiana-Allegheny.....	28,668,448	8,772,223	37,370,681	91,970,515	39,052,000	131,022,515	3.78	4.46			
1919.....	27,277,830	4,231,400	31,618,969	84,792,134	11,550,968	75,968,859	2.56	2.70			
Pennsylvania.....	9,802,323	2,901,269	6,763,831	26,961,809	12,763,480	25,161,285	3.35	4.53			
1919.....	4,226,068	1,686,131	6,908,214	15,776,873	4,636,868	16,405,146	2.49	2.76			
Southern.....	19,857,477	2,997,017	22,854,494	85,661,871	13,792,890	74,028,811	3.75	4.08			
1919.....	16,234,105	1,860,451	17,894,556	61,571,886	4,396,862	44,536,683	2.48	2.87			
Northwestern.....	20,657,321	2,377,485	23,034,806	98,123,089	10,946,830	69,571,294	4.26	3.13			
1919.....	18,701,597	1,866,963	17,377,860	61,623,477	5,697,594	43,594,215	3.87	3.02			
Central western.....	21,670,972	2,847,508	24,518,481	84,835,227	9,699,470	77,944,497	3.92	3.38			
1919.....	17,613,338	1,690,517	19,303,855	58,219,799	4,139,269	51,035,369	3.04	2.76			
Southwestern.....	7,852,472	1,904,668	9,757,140	38,063,770	7,799,199	33,657,961	4.07	4.02			
1919.....	6,666,064	1,362,686	7,961,700	26,144,612	4,040,755	24,185,367	3.65	3.15			
Total—All regions.....	125,684,546	29,857,000	155,541,546	641,224,469	398,260,688	133,595,262	4.13	4.33			
1919.....	107,536,008	16,861,408	124,397,416	500,096,566	267,766,866	313,076,894	3.18	2.86			

Notes.—In computing the average cost per net ton, certain tonnage for which the cost was not available was excluded. These exclusions, except as specifically stated in the footnotes below, are practically negligible in their effect, and hence are not stated in detail.

- 1 Excluding 1,992,083 tons, price not furnished.
 2 Excluding 354,774 tons, price not furnished.
 3 Excluding 2,767,632 tons, price not furnished.
 4 Excluding 133,471 tons, price not furnished.

TABLE No. 1.—Quantity and cost of fuel purchased by class I steam roads in the calendar years 1920 and 1919, by territorial regions—Continued.

Region and year.	Anthracite coal.				Fuel oil.			Coke.				
	Quantity purchased and delivered during year (net tons).	Total cost.		Average cost per net ton.	Fuel oil (barrels).			Coke (net tons).				
		Delivered.	At mine.		Delivered.	At mine.	Quantity purchased and delivered.	Total cost delivered.	Average cost per barrel.	Quantity purchased and delivered.	Total cost delivered.	Average cost per net ton.
New England.....	1920	39,828	8396,203	\$273,022	89.95	37.54	13,047	960,426	34.23	5,013	967,801	912.45
	1919	30,416	203,164	168,126	7.00	5.40	11,306	20,067	2.66	2,313	23,547	8.37
Great lakes.....	1920	3,477,266	14,095,645	14,474,590	4.05	4.16	100,886	357,000	3.54	5,944	63,930	10.77
	1919	2,777,576	9,341,878	8,762,645	3.36	3.16	173,943	213,466	1.80	5,763	43,364	7.23
Ohio-Indiana-Allegheny.....	1920	2,240,225	9,533,400	9,100,090	4.28	4.10	202,423	2,298,207	4.97	30,234	373,914	9.50
	1919	1,900,299	6,398,468	6,465,090	3.46	3.21	410,768	1,083,713	2.60	20,406	146,134	4.90
Pennsylvania.....	1920	292	1,033	1,473	9.88	7.29	13,295	103,253	5.65	10,176	109,311	10.76
	1919	77	296	296	5.17	5.17	16,769	46,071	2.75	8,511	61,033	7.43
Southern.....	1920	2,585	23,072	21,080	12.79	8.29	1,234,745	2,132,843	1.80	6,300	63,103	16.08
	1919	2,664	27,253	14,947	9.28	8.86	974,016	1,412,365	1.46	4,296	31,128	7.26
Northwestern.....	1920	12,496	12,496	90,747	12.20	11.92	4,821,216	9,372,979	1.55	13,465	214,060	15.90
	1919	10,262	10,383	33,897	10.09	9.77	4,861,203	7,968,867	1.78	13,646	186,577	11.68
Central western.....	1920	5,702	69,705	45,414	12.22	8.99	23,107,295	59,081,249	1.78	9,079	97,568	10.75
	1919	4,365	43,747	23,778	10.04	7.94	27,444,967	39,580,865	1.44	6,964	61,313	8.31
Southwestern.....	1920	1,424	15,267	13,477	10.71	9.46	15,992,893	25,418,045	1.89	2,530	39,732	15.70
	1919	1,443	12,376	10,904	8.58	7.56	9,668,677	11,616,527	1.21	2,313	26,206	11.31
Total—All regions.....	1920	5,779,810	24,080,472	24,080,472	4.20	4.17	55,590,783	97,874,094	1.76	91,642	1,027,336	11.21
	1919	4,796,338	15,508,177	15,508,177	3.27	3.25	42,948,400	61,315,473	1.43	75,900	533,945	7.27

611.C.C.

Region and year.	Wood.					Other fuel.		
	Hardwood (cords).			Softwood (cords).		Other fuel (net tons).		
	Quantity purchased and delivered.	Total cost delivered.	Average cost per cord.	Quantity purchased and delivered.	Total cost delivered.	Average cost per cord.	Quantity purchased and delivered.	Total cost delivered.
New England.....	1,640 600	\$17,472 5,440	\$10.65 9.06	6 219	\$29 884	\$4.56 4.04	265 350	\$27.05 7,068
Great lakes.....	2,085 87	4,702 5,552	5.49 4.12	5,536 5,355	11,530 9,260	2.05 1.73	2,803 31,283	17,853 184,141
Ohio-Indiana-Allegheny.....	254 91	705 285	2.78 3.25	4,958 8,406	15,576 26,791	3.20 3.19	8,948 9,101	28,726 51,370
Pacabonias.....	1920 1919							
Southern.....	24,971 5,354	134,704 24,523	4.99 4.64	14,544 17,465	55,238 59,657	3.80 3.41	817 1,331	12,188 14,276
Northwestern.....	80 88	365 363	4.44 4.01	98,318 69,689	308,404 220,289	3.06 3.16	50,468 35,189	300,770 183,434
Central western.....	2,825 2,728	12,449 12,111	4.76 4.79	8,675 7,578	24,429 20,557	2.82 2.71	35,612 33,263	254,438 160,724
Southwestern.....	218 20	1,327 154	6.14 7.70	4,161 2,686	9,670 7,959	2.32 2.21	45,646 24,904	140,146 66,068
Total—All regions.....	32,855 10,965	172,795 52,705	5.26 4.80	131,298 112,337	435,188 345,376	3.20 3.07	147,261 183,410	819,530 643,991

TABLE NO. 2.—Quantity of bituminous coal purchased and average price at mine, 1920 and 1919, by producing districts, for steam roads with annual operating revenues above \$25,000,000.

Road and producing district.	Originating carrier.	Quantity, in net tons, purchased and delivered during the year.				Average cost at mine per net ton.				Average cost per net ton delivered.
		Contract.		Spot.		Contract.		Spot.		
		1920	1919	1920	1919	1920	1919	1920	1919	
<i>New England region.</i>										
Boston & Maine R. R.:	P. R. R.	197,400	166,447	90,915	87,160	94.28	92.54	96.76	92.60	96.31
Cleaveland.....	P. R. R.	74,366	45,338	99,135	18,010	3.61	2.35	4.72	2.35	6.53
Greenbury.....	P. R. R.	307,720	220,777	5,728	29,458	3.66	2.43	3.66	2.43	5.90
Westmoreland.....	Monon.	28,846	128,091	16,361	29,780	2.40	2.15	2.36	2.04	4.87
Cleaveland.....	B. & S.	77,353	85,404	16,022	13,960	3.52	2.58	4.10	2.58	5.54
Cleaveland.....	P. & S.	39,911	178,336	17,448	3,222	2.60	2.03	5.44	2.03	5.44
Cleaveland.....	H. & B. T.	180,904	70,946	31,319	7,703	3.40	2.73	5.20	2.73	5.20
Cleaveland.....	M. & W. R. R.				4,018				2.00	5.20
Westmoreland.....	B. & L. E.			2,012	4,018				2.16	5.15
Westmoreland.....	Unknown.			6,699	26,664			5.28	2.16	7.43
Cleaveland (est.).....	Unknown.			29,285	84,980			5.19	2.77	7.10
Patmont.....	B. & O.	181,106	107,689	81,185	39,646	3.78	1.57	4.11	2.31	6.32
Kanawha.....	C. & O.			211,107	87,144			4.04	2.47	6.73
Cleaveland.....	W. R.			1,087				4.43		9.80
Cleaveland.....	Unknown.			246,383				7.68		9.80
Cleaveland.....	P. R. S. N.			8,020				3.10		4.80
M. Y. New Haven & Hartford R. R. Co.:										
Patmont.....	B. & O.	314,289	386,448			2.82	2.80			
Central Pa.:	P. R. R.	187,159	383,370			2.46	2.55			
Western Pa.:	P. R. R.	854,289	143,764			4.19	2.35			
Central Pa.:	P. & S.	125,768	47,921			3.37	2.96			
Greenburg basin.....	P. R. R.	345,664	191,685			3.28	2.85			
Latrebe.....	P. R. R.	94,377	96,842			4.21	2.35			
Spot.....				1,388,693	991,519			5.75	2.27	
<i>Great Lakes region.</i>										
Dakota & Hudson Co.:	P. R. R.	817,680	847,960	126,141	29,074	3.35	2.41	2.90	2.44	4.98
Central Western & W. Pa.:	P. & S.	26,328	2,144			3.10	2.85			5.13
Central Western & W. Pa.:	I. C. & P.									
Northern W. Va.:	B. & O.	3,442		16,626	1,337	3.28	3.79	2.75	2.73	6.01

E. I. C. C.

INCREASED COST OF RAILROAD FUEL.

[illegible]

Not furnished.

TABLE No. 2.—Quantity of bituminous coal purchased and average price at mine, 1920 and 1919, by producing districts, for steam roads with annual operating revenues above \$25,000,000—Continued.

Road and producing district.	Originating carrier.	Quantity, in net tons, purchased and delivered during the year.				Average cost at mine per net ton.				Average cost per net ton delivered.
		Contract.		Spot.		Contract.		Spot.		
		1920	1919	1920	1919	1920	1919	1920	1919	
Great Lakes region—Continued.										
Lehigh Valley R. R. Co.:										
Penns.....	P. R., E. & S., P. & S., B. R. & P. and E. & O.	1,042,803	921,154	163,379	76,844	\$3.37	\$2.43	\$3.03	\$2.50	\$4.06
West Virginia.....	E. & O.	302,158	227,021	67,274	31,642	2.99	2.16	2.03	2.33	4.96
Ohio.....	E. & O.	95,688	104,121	9,611	4,520	2.85	2.08	2.60	2.00	4.74
Michigan Central R. R. Co.:										
Ohio—										
Thick vein.....	H. V., T. O. C.	310,322	422,705			3.19	2.10			4.65
Pittsburgh No. 8.....	W. L. E., B. O.	37,380	37,380			3.20	2.10			4.71
Thin vein.....	Z. W.	151,471	102,243			2.74	2.04			3.93
Various districts.....	Various.	61,243								3.37
Foreign railroads.....	Various.			64,617	89,071			3.09	2.13	4.20
Illinois—										
Saline Co., Harrisburg.....		13,748	14,433			3.01	2.41			4.93
Montgomery Co., Hillsboro.....	Big 4.	264,535	189,374			2.76	2.36			4.27
Vermillion Co., Danville.....	N. Y. C.	70,643				2.75				4.71
Various districts.....	Various.	98,781				3.07				3.64
Foreign railroads.....	Various.			43,406	661			2.71	1.95	2.04
Indiana—										
West Clinton.....	C. T. H. S. E.	1,801	1,708			2.53	2.23			4.11
Various districts.....	Various.	113,093	142,360			2.80	2.17			2.68
Foreign railroads.....	Various.			133,927	44,689			3.00	2.34	4.01
Michigan.....	M. C.	19,713	16,727			3.46	2.80			3.46
Extra.....	M. C.	370,152	301,314			4.49	3.96			4.85
Pennsylvania.....	M. C., E. B. S.			22,913	20,785			3.44	2.74	3.44
Various districts.....	B. L. E.	92,062	141,767			3.28	2.43			3.21
Foreign railroads.....	Various.	26,146	36,653	20,250	14,068	2.95	2.43	3.34	2.45	3.31
West Virginia.....										4.10
New York Central R. R. Co.:										
Ill. No. 3.....	Big 4, C. T. H. & S. E.			190,013	263,441			3.39	2.76	5.11
Ill. No. 6.....	Big 4, C. T. H. & S. E.	198,000	167,691			2.70	2.27			3.29
Ohio No. 8.....	N. Y. C., P. & T. & O. C., P. & W. V., B. & O., W. & L. E.	293,343	278,129	12,555		2.86	2.27	4.93		3.15
		1,713,061	1,338,740	158,570		3.21	2.10	4.73		4.10

ELCC

TABLE No. 2.—Quantity of bituminous coal purchased and average prices at *ns*, 1920 and 1919, by producing districts, for steam roads with annual operating revenues above \$25,000,000—Continued.

Road and producing district.	Originating carrier.	Quantity, in net tons, purchased and deliver during the year.				Average cost at mine per net ton.				Average cost per net ton delivered.
		Contract.		Spot.		Contract.		Spot.		
		1920	1919	1920	1919	1920	1919	1920	1919	
Ohio-Indiana-Arizona regions-Contd.										
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.										
Central Illinois	I. C. R.			60				92.10		92.73
Central Illinois	C. I. & W.	484,561	255,754	8,195	73,405	3.09		2.97		2.04
Harrisburg, Pa.	C. C. & St. L.			80,101		3.25		3.23		
Harrisburg, Pa.	B. & O.					2.35				
Western Illinois	C. C. & St. L.			35,049	25,118	2.73		2.76		2.74
Western Illinois	C. C. & St. L.	310,057	167,391	2,320	7,165	2.63		2.45		2.91
Kanawha, W. Va.	C. C. & St. L.	185,597	75,387	15,590	15,590	1.99		2.01		2.68
Legan, W. Va.	C. & O.	45,175	205,595	12,547	11,239	2.17		2.09		2.73
Legan, W. Va.	C. & O.	13,619	86,561	1,544	12,611	2.17		2.75		2.37
Palmer, W. Va.	B. & O.									4.06
Palmer, W. Va.	N. & W.									2.99
Thacker, W. Va.	L. & N.									2.99
Western Kentucky	C. & O.	10,335	10,335		2,794	2.43		2.40		4.39
Eastern Kentucky	B. & O.			2,335	1,808	2.34		2.57		4.34
Eastern Kentucky	L. & N.	105,849		4,520				2.41		2.61
Hocking, Ohio	B. & O.					2.14		1.99		2.63
Hocking, Ohio	H. V.	1,597	1,430	5,685	5,685	2.14		1.79		2.63
Hocking, Ohio	Z. & W.	24,174	55,344	4,676	12,817	2.13		1.73		2.63
Hocking, Ohio	Penn. Co.	787	11,932	5,019	1,794	2.13		1.77		2.63
Hocking, Ohio	K. & M.			685	845			1.99		2.67
Hocking, Ohio	W. & L. E.			52	1,468			2.50		2.61
Hocking, Ohio	T. & O. C.					2.14		2.73		2.67
Hocking, Ohio	D. T. & I.	691		535	15,307	2.13		2.73		2.64
Indiana	C. T. H. & S. E.									2.65
Indiana	E. I. & T. H.	80,585	142,095	19,742	51,124	2.67		2.55		2.65
Indiana	G. C. C. & St. L.	390,318	1,447	11,775	29,175	2.99		2.03		2.65
Indiana	F. C. C. & St. L.	335,987	264,108	28,697	28,697	2.67		2.67		2.67
Indiana	C. C. & M. I.	53,817	86,076	15,795	6,625	2.81		2.47		2.68
Indiana	L. C.			17,216	4,396			2.00		2.90
Indiana	C. I. & W.		264							4.06
Indiana	Southern	80,815				2.17				4.06
Indiana	C. I. & L.			5,665				2.63		

Various.	44,038	154,489	2,92	3.46	.....
Various.	.....	.....	2.98	.....	4.50
Various.	128,239	24,036	5.59	6.43	3.20
P. R. R.	48,187	2,47	2.74	2.47	2.74
P. R. R.	255,426	9,515	2.29	2.96	2.74
I. C.	38,986	420	4.10	3.18	2.39
P. C. C. & St. L.	11,137	2,943	4.89	5.48	2.82
Linton-Bicknell (Ind.)	16,425	2,58	2.17	2.58	.....
P. R. R.	331,758	2,84	2.84	2.84	2.84
Linton-Dugger	38,186	2,84	2.24	2.82	2.24
P. C. C. & St. L.	290,107	2,82	2.27	2.67	2.27
P. C. C. & St. L.	879,122	2,67	2.53	3.45	.....
I. C. et al.	41,556	2,53	.....	10.45	.....
Unknown.	.....	.....	.....	8.45	.....
Western Kentucky (Ky.)	46,238	.....	.....	4.22	.....
Eastern Kentucky (Ky.)	3,490	.....	.....	4.01	.....
Hooking (Ohio)	21,245	.....	.....	5.43	.....
Springfield (Ill.)	14,109	.....	.....	7.83	.....
Standard (Ill.)	413	.....	.....	8.46	.....
Pittsburgh No. 8 (Ohio)	.....	.....	.....	3.15	2.18
Salemville-Goshen (Ohio)	708,320	3.19	2.18	3.15	2.18
P. R. R.	216,632	3.17	2.35	3.17	2.35
P. R. R.	31,822	2.46	2.23	3.17	2.35
P. R. R.	406,824	3.60	2.31	2.47	2.34
P. C. C. & St. L.	102,310	22,982	8.01	2.77	2.34
P. C. C. & St. L.	21,264	.....	.....	2.77	2.34
P. C. C. & St. L.	470,071	3,959	2.33	3.01	2.34
P. C. C. & St. L.	777,038	3,777	2.77	2.96	2.34
P. C. C. & St. L.	722,431	2,568	2.80	2.81	2.30
P. C. C. & St. L.	352,441	.....	2.56	4.01	2.63
N. Y. C. Atl. Nor. C. & T. E. B.	1,794,375	123,559	6.68	2.96	.....
T. E. & B. T. M., D. T. & D., J. B. & C.	1,921,637	.....	.....	.....	.....
C. T. H. & S. E.	155,793	3,583	2.73	4.34	3.58
P. R. R.	242,074	8,715	3.42	4.34	3.58
P. C. C. & St. L.	2,656,086	19,178	6.71	2.69	2.40
P. C. C. & St. L.	18,036	241	4.82	2.71	3.09
P. R. R.	1,573,638	18,047	7.37	2.46	3.94
P. R. R.	1,752,449	57,513	2.35	2.52	2.39
P. R. R.	.....	.....	.....	.....	.....
P. R. R.	774,985	10,344	2.61	11.06	2.68
P. R. R.	645,979	26,473	3.36	2.97	2.68
P. C. C. & St. L.	62,081	55,614	3.03	3.03	2.42
P. C. C. & St. L.	29,649	26,835	2.96	4.68	2.44
P. C. C. & St. L.	911,994	34,723	3.30	2.62	2.40
P. C. C. & St. L.	90,780	22,223	3.16	2.82	2.30
P. C. C. & St. L.	219,070	106,041	4.24	8.08	4.21
P. R. R.	1,482,417	39,101	3.49	3.62	2.39
P. R. R.	2,247,761	.....	.....	.....	.....
Unknown.	.....	961	4.49	5.80	4.16
Unknown.	19,888	445	6.14	8.64	.....
Unknown.	6,097	.....	5.69	6.32	.....

	W. Md.	W. Va.	Pa.	Ohio	Ind.	Ill.	Mo.	Ark.	La.	Tex.	Cal.	W. Dak.	S. Dak.	Nebr.	Kan.	Okla.	Col.	W. Y.	Id.	Mont.	Wyo.	Utah	Nev.	Ariz.	N. Mex.	Ala.	Miss.	Fla.	Ga.	South.	Other	Total
Elk Garden	200	9,425	43,576	11,571	405	5,145	2,09	5,37	2,98	7,61	2,50	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1
Fairbanks	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25	2,15	2,00	1,67	1,57	1,46	1,35	1,24	1,13	1,02	91	80	69	58	47	36	25	14	3	2	1	1
Fairmount	7,323	3,723	35,643	17,197	1,000	2,091	7,66	2,98	2,98	5,37	2,25																					

Pocahontas region.

Chesapeake & Ohio Ry. Co.:
 Low volatile.....
 High volatile.....
 Norfolk & Western Ry. Co.:
 N. & W. fields.....
 Interstate R. R.....
 Other foreign roads.....

Southern region.

Atlantic Coast Line R. R. Co.:

O. & O.
N. & W.
Interstate

[illegible]

Not furnished.

TABLE NO. 2.—Quantity of bituminous coal purchased and average price at mine, 1920 and 1919, by producing districts, for steam roads with annual operating revenues above \$25,000,000—Continued.

Road and producing district.	Originating carrier.	Quantity, in net tons, purchased and delivered during the year.				Average cost at mine per net ton.				Average cost per net ton delivered.
		Contract.		Spot.		Contract.		Spot.		
		1920	1919	1920	1919	1920	1919	1920	1919	
Northwestern region—Continued.										
Oregon—Washington R. R. & Nav. Co.:	P. C. R. R.	133,193	112,506							
Washington	N. P. R. R.	38,468	34,878	214				36.79		34.84
Washington	O. W. R. & N.	231,767	186,063			4.03	3.97	6.75		4.08
Washington	Utah Ry.	20,632				2.21	1.99			1.98
Wyoming and Utah	D. R. & G.	119,209	61,229	880	288	2.60		2.58	32.80	6.86
Wyoming and Utah	O. S. L. R. R.	201,237	166,061	893	1,086	3.12	2.81	2.38	2.57	3.10
Wyoming and Utah	U. P. R. R.			30		2.87	2.47	6.00		9.17
Canada.	O. P. R.	84,899	66,308			4.31	3.87			6.97
Central Western region.										
Arkansas, Topoka & Santa Fe Ry. Co.:	A. T. & S. F.	545,977	393,215	102,094	98,262	2.73	2.15	2.76	2.62	2.98
Illinois.	A. T. & S. F.	269,749	136,770			2.94	2.73			3.94
Missouri.	A. T. & S. F.	777,474	597,704	396	2,886	2.96	3.23	4.09	3.59	3.96
Kansas.	A. T. & S. F.			23,830	21,003	2.19	2.74	4.89	3.32	3.33
Oklahoma.	A. T. & S. F.	1,647,549	1,260,171	4,835	8,067	3.15	2.74	3.23	3.92	3.99
Colorado & New Mexico.	A. T. & S. F.	315,437	286,782			4.86	4.36			4.36
Calif.	A. T. & S. F.			7,652	5,497			2.67	2.11	2.56
Texas.	A. T. & S. F.									
Chicago & Alton R. R. Co.:	C. & A. and Sou.	932,526	803,231	62,077	14,178	2.75	2.29	4.93	2.67	2.32
Illinois and Missouri.	Not available.			22,101	101,603			2.73	2.85	5.23
Chicago, Burlington & Quincy R. R. Co.:	C. B. & Q.	593,498	281,310							
Illinois.	C. B. & Q.	382,877	454,391			3.22	2.74			2.78
North Illinois.	C. B. & Q.	2,128,877	1,698,924			3.34	2.31			3.24
Southern Illinois.	C. B. & Q.	176,184	223,021			3.05	2.26			3.04
Central Iowa and Centerville District.	C. B. & Q.	307,687	168,171			3.05	3.04			3.05
Barber, Mo.	C. B. & Q.	104,637	45,177			3.72	2.97			3.73
Nevada, Mo.	C. B. & Q.	27,433	443,437			3.59	3.13			4.13
Camden, Wyo.	C. B. & Q.	228,482	443,437			3.29	2.15			2.78
Southern Colorado.	C. B. & Q.	81,975	34,384			3.39	2.62			4.30
Indiana.	Colo. & Sou.			5,000				3.70		5.08
Ballville, Illinois District.	Various.	71,537		107,000			2.34	3.39		3.96

TABLE No. 2.—Quantity of bituminous coal purchased and average price at mine, 1920 and 1919, by producing districts, for steam roads with annual operating revenues above \$25,000,000—Continued

Road and producing district.	Originating carrier.	Quantity, in net tons, purchased and delivered during the year.				Average cost at mine per net ton.				Average cost per net ton delivered.
		Contract.		Spot.		Contract.		Spot.		
		1920	1919	1920	1919	1920	1919	1920	1919	
Central Western region—Continued.										
Chicago, Rock Island & Pacific Ry. Co.—Continued.										
Colorado.	A. T. & S. F.				69					87.10
Idaho.	D. P. G.				97					4.85
Idaho, N. M.	D. P. G. W.	215,466	145,787	25,430	26,075	33.15	32.74	33.51	1.35	2.61
Idaho, N. M.	R. L. & S. F.			25,104				3.24	4.15	
Idaho, N. M.	R. L. & S. F.			24,553				3.04		
Idaho, N. M.	P. C.	450,198	442,860	16,678	861	4.71	3.83	4.02		3.51
Idaho, N. M.	M. K. & T.			171				4.43		
Idaho, N. M.	M. K. & S. F.			174				4.03		
Idaho, N. M.	R. L. & S. F.	155,427	52,726	278		4.08	3.41	4.03		3.41
Idaho, N. M.	M. V.			47				5.51		
Idaho, N. M.	S. L. S. W.			165				4.80		4.75
Idaho, N. M.	C. R. I. & G.	29,739	24,069	217		6.11	4.75	6.10		
Idaho, N. M.	S. L. & S. F.			57				4.70		
Idaho, N. M.	Unknown.			245,951	55,653			3.65	3.65	5.09
Idaho, N. M.	Unknown.			58,249	8,676			2.97	3.05	4.73
Idaho, N. M.	Unknown.			46,119	25,933			2.97	3.31	5.23
Idaho, N. M.	Unknown.			2,694	1,333			3.02	2.65	5.43
Idaho, N. M.	Unknown.				1,198			3.21		5.14
Idaho, N. M.	L. O.			187	215			7.55	2.04	4.26
Idaho, N. M.	L. & N.			10,377				3.06		4.23
Idaho, N. M.	L. & S. F.			551	251			4.26	3.23	4.70
Idaho, N. M.	K. C. M. & O.				17					5.29
Idaho, N. M.	K. C. B. & Q.			2,348	3,534			3.24	3.41	4.63
Idaho, N. M.	No. T. M.			15	70			2.57	2.14	5.55
Idaho, N. M.	S. L. & S. F.			11	365			2.73	2.76	4.53
Idaho, N. M.	Unknown.			240				3.45		
Idaho, N. M.	U. P.			1,196	1,459			3.29	2.50	6.37
Idaho, N. M.	D. & R. G.	539,953	482,897	44,376	26,832	3.15	2.59	3.27	2.47	2.89
Idaho, N. M.	R. C. B.	42,831	31,545	24		2.76	2.49	2.53		2.31
Idaho, N. M.	C. & S. E.	47,630	10,860		10,150	3.44	2.70	2.70		2.93
Idaho, N. M.	C. & S. E.	2,161	44,567	23,106	13,929	2.81	2.66	2.60		2.53
Idaho, N. M.	Denver & Rio Grande R. R. Co.									
Idaho, N. M.	Colorado.									
Idaho, N. M.	Colorado.									
Idaho, N. M.	Colorado.									
Idaho, N. M.	Colorado.									

Colorado	U. P.	3,514	4,326	3,514	3,23	2.60	2.06	3.37	2.65
Colorado	D. & W.	2,053	4,326	2,053	919	3.25	3.12	3.34	2.65
New Mexico	N. M. C.	0	365,332	0	6,773	3.00	2.97	3.28	3.12
New Mexico	D. & R. G.	11,983	365,332	11,983	6,773	3.00	2.97	3.28	3.12
Utah	U. R.	463	365,332	463	6,773	3.00	2.97	3.28	3.12
Utah	U. P. R. & O. S. L. R. R.	280,414	370,934	280,414	192,975	2.91	2.54	3.14	2.74
Utah	D. & R. G. & L. A. & S. L.	172,846	131,606	172,846	101,576	2.81	2.78	4.53	4.76
Washington	N. P. R. R.	983	2,109	983	3.88	4.13	3.85	6.18	5.68
Oregon	S. P. Co.	8,136	2,109	8,136	4.64	3.76	3.76	6.18	3.76
Oregon-Wash. R. R. & Nav. Co.	U. P. R. R.	103	4,505	103	3.96	3.09	3.09	6.06	4.66
Utah	D. & R. G.	18,717	4,505	18,717	3.96	3.09	3.09	6.06	4.66
Utah	Sprinkles Com'l Co., San Diego	304	304	304	3.96	3.09	3.09	6.06	4.66
Confederated	S. P. Co.	333	304	333	3.96	3.09	3.09	6.06	4.66
Southern Pacific Co.-Atlantic S. Lines:									
Scranton, Pa.	D. L. & W. & P. R. R.	2,281	25,157	2,281	4.95	(1)	5.92	8.63	6.04
Alabama	L. & N.	88,919	25,157	88,919	4.35	(1)	(1)	7.55	6.90
Edinburg, Ind	C. & I., N. Y. C.	94,357	94,357	94,357	4.35	(1)	(1)	7.55	6.90
Unknown								5.20	5.20
Union Pacific R. R. Co.:									
Rock Springs	U. P.	3,137,529	2,505,138	14,671	10,941	3.16	2.60	3.16	2.60
Colorado mines	O. S. L.	24,372	12,342	2,111	1,240	2.28	3.41	2.85	6.41
Colorado mines	C. B. & Q.	2,403	2,403	2,403	76	2.23	2.61	2.85	4.46
Colorado mines	D. & R. G.	19,614	5,365	1,921	99	3.51	2.73	5.93	2.70
Colorado mines	U. P.	389	5,365	2,264	99	2.66	1.61	2.84	4.81
Colorado mines	D. & S. L.	2,801	13,606	50	44	2.78	2.16	5.15	3.06
Colorado mines	C. & S.							2.40	3.76
Colorado mines	B. & O.	3,443	922	180	47	2.57	4.64	4.64	3.76
Colorado mines	Southern	31,738	187,673	126	428	2.08	2.83	0.90	2.17
Colorado mines	C. R. I. & P.	24,394	1,363	39	38	2.30	3.38	4.82	2.90
Colorado mines	Washington	5,362	14,422	102	232	2.23	2.63	4.68	4.16
Colorado mines	C. & N. W.	50	40	188	238	2.79	2.74	7.97	4.23
Colorado mines	C. B. & Q.	53	1,082	188	231	2.18	2.43	5.17	3.34
Colorado mines	C. & P.		135	34	188	2.49	3.21	5.17	3.06
Colorado mines	C. & E. I.	261	261	34	34	2.74	2.69	5.17	3.06
Colorado mines	M. T. & S. F.							3.06	3.06
Colorado mines	C. C. & S. L.							3.06	3.06
Colorado mines	C. & A. C.	1,319	1,319	211	211	2.40	3.24	3.06	3.06
Colorado mines	S. L. & S. F.	6,265	6,265	42	42	2.50	3.21	4.08	3.06
Colorado mines	S. L. & S. F.	219,320	219,320	6,517	6,517	2.70	3.13	4.08	3.06
Utah mines	D. & R. G.	35,525	219,320	341	341	3.08	2.85	5.22	4.91
Utah mines	U. P.	3,289	1,240	104	104	3.36	3.72	4.91	4.91
Utah mines	O. S. L.	67,551	12,261	14	14	2.09	5.63	4.91	4.91
Utah mines	U. C. B.	32,880	4,624	49	49	2.77	5.00	4.91	4.91

1 Not furnished.

TABLE No. 2.—Quantity of bituminous coal purchased and average price at mine, 1920 and 1919, by producing districts, for steam roads with annual operating revenues above \$25,000,000—Continued.

Road and producing district.	Originating carrier.	Quantity, in net tons, purchased and delivered during the year.				Average cost at mine per net ton.				Average cost per net ton delivered.	
		Contract.		Spot.		Contract.		Spot.		1920	1919
		1920	1919	1920	1919	1920	1919				
Central Western region—Continued.											
Union Pacific R. R. Co.—Continued. Kansas mines.....	U. P.	22,093	14,408	1,102	13	\$5.21	\$4.04	\$3.92	\$4.15	\$5.15	\$4.04
	St. J. & G. I.	18,887	25,585			6.69	7.13			6.94	7.13
	C. B. & Q.	9,672				3.65				5.48	
	M. P.	29				5.32				7.51	
	C. R. I. & P.	4				6.84				6.84	
Missouri mines.....	St. J. & G. I.	3,164			41	8.29		3.26		8.29	4.60
	St. L. & S. F.					3.60				5.63	
	C. B. & Q.	2,743				2.25		1.98		4.07	
	Southern.	384		37		4.04				7.07	
	C. R. I. & P.	13,356		42				7.53		8.31	
Southwestern region.	C. & A.		194				2.40				3.79
	Wabash.		54				2.39				3.47
	St. L. & S. F.										
	Various.	179,937	145,573	200,610	206,536	2.46	2.38	3.14	3.13	3.50	4.15
	St. L. & S. F.	171,245	185,943	12,980	17,085	3.01	3.15	4.73	3.14	3.97	3.25
Missouri, Kansas & Texas Ry. Co., of Texas:	M. O. & G.	321,418	260,008	91,045	3,458	4.54	3.76	4.56	4.39	4.41	3.53
	Oklahoma.										
	Texas.	272,450	482,725	76,213	71,065	4.35	3.09	4.54	4.35	4.71	4.98
	T. & P.		32,678	29,746			4.53	5.00		5.55	4.94
	Missouri Pacific R. R. Co.:										
Southern Illinois.....	M. O. P.	1,052,445	862,523	456,081	189,687	2.61	2.09	2.09	2.27	2.76	2.15
	M. O. P.	150,607	454,523	140,292	25,198	3.76	3.15	4.28	3.71	3.85	2.15
	Ill. Cent. and others.....	95,685	211,913	169,261	21,528	2.06	1.79	4.59	1.81	4.56	2.08
	D. & R. G.-O. & S.	146,912	69,359	7,450	33,687	3.09	2.70	4.93	2.88	4.92	4.10
	Lexington, Mo.	387,030	256,131	26,764	12,313	4.04	3.56	4.80	4.15	4.09	3.88
Arkansas.....	M. O. P.	166,083	110,818	17,492	4,373	4.06	3.57	2.97	4.74	5.19	3.53
	N. & W.-O. & O.			151,515	215,943			2.97	2.81		

S. I. C. C.

[illegible]

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

I. & S. 1181. JOINT RATES BETWEEN SOUTHERN PACIFIC AND GULF COAST LINES POINTS (2). Proposed cancellation of rates and routes between points on the Southern Pacific Co. and points on the Gulf Coast Lines. *G. Glessow* for protestants. *F. A. Leland, E. B. Boyd, A. O. Fonda, and W. J. Kelly* for respondents. Proceeding discontinued, May 9, 1921.

I. & S. 1257. NATCHEZ-LOUISIANA RATES. Proposed increases in class and commodity rates between Natchez, Miss., and New Orleans, Baton Rouge, and other Louisiana points. *E. C. Sparks, E. Moulton, F. A. Leffingwell, E. P. Byars, W. M. Barrow, J. B. Rucker, L. F. Daspit, H. J. Fernandez, L. E. Potts, H. D. Driscoll, B. F. Martin, and W. W. Martin* for protestants. *C. D. Draytor, F. A. Leland, and B. S. Atkinson* for respondents. Proceeding discontinued, May 16, 1921.

I. & S. 1280. CLASS RATES TO AND FROM MISSISSIPPI VALLEY POINTS. Rates rules, regulations, and practices of carriers in Mississippi Valley territory. *E. Moulton, R. G. Cobb, J. B. Rucker, J. S. Davant, J. B. McGinnis, R. B. Phillips, J. R. Allen and G. J. Visard* for protestants. *E. A. deFuniac, D. M. Goodwyn, W. H. Grumley, A. J. Chapman, H. E. Wilson, C. Schonfelder, E. R. Oliver, J. Hattendorf, C. Barham, and W. J. Kelly* for respondents. Proceeding discontinued, May 13, 1921.

I. & S. 1270. JOINT RATES BETWEEN SOUTHERN PACIFIC AND GULF COAST LINES POINTS. Proposed cancellation of rates and routes between points on the Southern Pacific Co. and points on the Gulf Coast Lines. *W. Graves, J. A. Morgan, C. A. Bland, and F. C. Clark* for protestants. *H. M. Garwood, J. C. Brasher, J. A. Brown, and C. H. Gulon* for respondents. Proceeding discontinued, May 9, 1921.

I. & S. 1286—No. 2. CANCELLATION OF JOINT THROUGH RATES IN CONNECTION WITH GULF, MOBILE & NORTHERN R. R. Proposed cancellation of joint rates with the Gulf, Mobile & Northern R. R. No appearances for protestants. *T. D. Geoghegan* for respondents. Proceeding discontinued, May 9, 1921.

I. & S. 1290. CLASS RATES FROM EASTERN POINTS TO GREEN BAY, WIS., AND OTHER POINTS. Proposed increases in class rates from eastern points to Green Bay, Wis., and other points. *W. E. McCormack and W. F. Kerwin* for protestants. No appearances for respondents. Proceeding discontinued, April 12, 1921.

I. & S. 1805. GREEN SALTED HIDES TO SOUTHEASTERN AND CAROLINA TERRITORIES. Proposed increased rates on green salted hides to southeastern and Carolina territories. *W. O. Mitchell, C. S. Smoot, and R. D. Rynder* for protestants. *W. J. Kelly* for respondents. Proceeding discontinued, May 9, 1921.

I. & S. 1808. ROUGH AND SAWED STONE FROM BEDFORD, IND. Proposed increased rates on rough and sawed stone from Bedford, Ind. *C. G. Creighton* for protestants. *A. C. Hultgren and A. C. Tunny* for respondents. Proceeding discontinued, May 9, 1921.

10775. UNITED STATES SMELTING, REFINING & MINING CO. v. DIRECTOR GENERAL ET AL. Rates on bullion and other smelter products from Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington to New York, N. Y. *G. W. Cushing* and *Howat, Marshall, Macmillan & Nebeker* for complainant. *H. C. Martin, E. P. Flintoft, and R. V. Fletcher* for defendants. Dismissed on request of complainant, April 12, 1921.

11847. GALVESTON, HARRISBURG & SAN ANTONIO RY. CO. ET AL. v. S. L. RY. Alleges that divisions are unjust, unreasonable, and inequitable, and afford respondent unreasonable compensation for the service performed by it. *Baker, Botts, Parker & Garwood, J. M. King, J. W. Terry, J. J. Hershey, C. H. Guion, J. T. Garvin, J. C. Mangham, J. T. Howe, Thompson, Baroisc, Wharton & Hmer, and H. Booth* for complainants. *A. M. Waugh and S. C. Griffin* for defendant. Dismissed on request of complainants, May 9, 1921.

11866. OMAHA CHAMBER OF COMMERCE, TRAFFIC BUREAU v. C. & N. W. RY. CO. ET AL. Rates on lumber and forest products from points in Oregon, Washington, Idaho, Montana, and British Columbia to Omaha, Nebr. *O. E. Chide* and *S. Frier* for complainant. *O. E. Elmquist, W. O. McCullough, R. J. Knott, H. N. Poebstel, G. E. Carlson, S. B. Houch, H. Mueller, G. F. Thomas, and A. G. T. Moore* for interveners. *H. A. Scandretti and B. W. Scandretti* for defendants. Complaint satisfied. Dismissed May 9, 1921.

11928. NOLAN SMITH & CO. v. DIRECTOR GENERAL ET AL. Rates on cattle from Winnipeg, Manitoba, to South St. Paul, Minn. *L. Pettijohn* for complainant. *A. H. Losso* and *T. M. Woodward* for defendants. Dismissed for lack of prosecution, April 12, 1921.

11987. SWIFT & CO. ET AL. v. A. A. R. R. CO. ET AL. Rules and regulations requiring prepayment in United States currency of the full amount of the freight charges on all shipments of fresh meats, packing-house products, and various other commodities shipped from points in the United States to points in Canada. *R. D. Rynder* for complainants. *C. A. Laney and E. J. Norris* for interveners. *R. W. Barrett, W. K. Williams, R. H. Widdicombe, A. P. Hambury, A. H. Losso, J. R. McInerney, and J. N. Davis* for defendants. Dismissed on request of complainants, May 9, 1921.

12074. MITSUI & CO. (LTD.) v. DIRECTOR GENERAL, AS AGENT, ET AL. Rates on imported antimony regulus from Seattle, Wash., to New York, N. Y. *E. J. Forman* for complainant. *T. M. Woodward* for defendants. Dismissed on request of complainant, April 12, 1921.

12091. CALIFORNIA WESTERN R. R. & NAV. CO. v. A. T. & S. F. RY. CO. ET AL. Divisions of through rates on shipments of lumber from points on complainant's line to points on or via lines of defendants. *Sandorn & Roehl* for complainant. *J. J. Geary and E. Westlake* for defendants. Complaint satisfied. Dismissed May 9, 1921.

12102. ALFRED MILLING CO. ET AL. v. L. & N. R. R. CO. ET AL. Transit privileges on cottonseed products, rice products, molasses, and other ingredients at Nashville, Tenn. *T. M. Henderson* for complainants. *W. Burger* for defendants. Dismissed on request of complainants, April 12, 1921.

12140. LOEWENTHAL CO. v. C. & N. W. RY. CO. ET AL. Rates on scrap metals and rubber from points in Texas to Chicago, Ill. No appearances for complainant. *A. B. Enoch and H. R. Brashear* for defendants. Dismissed on request of complainant, April 12, 1921.

12194. BOSTON WOOL TRADE ASSO. v. B. & A. R. R. CO. ET AL. Terminal facilities, additions, extensions, rates, charges, and practices and through routes and joint rates between all tracks, stations, and sidings at Boston, Mass., and New York, N. Y. *H. A. Davis* for complainant. *G. H. Fernald, Jr.,*
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W. A. Cole, and *W. F. Everding* for defendants. Dismissed on request of complainant, May 9, 1921.

12217 and Sub. No. 1. *CENTRAL WISCONSIN SUPPLY Co. v. M., St. P. & S. STE. M. RY. Co. ET AL.* Storage and demurrage charges on one carload of lumber at Minnesota Transfer, Minn. *B. T. Bailey* for complainant. *F. G. Dorety*, *R. J. Hagman*, and *J. F. Finerty* for defendants. Complaint satisfied. Dismissed, April 12, 1921.

12224 and Sub. Nos. 1 and 2. *BURNS & Co. (LTD.) v. C. & O. RY. Co. ET AL.* Rates on cattle from Timberville, Cave Station, and Fort Defiance, Va., to Newport News, Va., for export. *J. G. Hiden* for complainant. *E. A. Hotchkiss*, *J. F. Finerty*, *O. R. Webber*, and *O. J. Rixey* for defendants. Complaint satisfied. Dismissed, April 12, 1921.

12259. *SERGEANT COAL Co. ET AL v. E. S. & N. RY. Co. ET AL.* Rates on coal from Boonville district, Ind., to points in Illinois, Wisconsin, Iowa, and Minnesota. *C. B. Cardy*, *F. H. Harwood*, *A. E. Hueneryager*, *W. A. Holley*, and *O. P. Hoy* for complainants. *G. Muhlhausen*, *P. V. Versen*, *G. H. Kummer*, *K. L. Richmond*, *W. A. Carson*, *B. J. Rowe*, *F. S. Reigel*, and *R. D. Hunter* for defendants. Dismissed on request of complainants, May 9, 1921.

12290. *SWIFT & Co. v. DIRECTOR GENERAL ET AL.* Rates on car wheels to and from South Omaha, Nebr., and Kansas City, Mo. *R. D. Rynder* for complainant. *K. F. Burgess* and *J. F. Finerty* for defendants. Complaint satisfied. Dismissed, May 9, 1921.

12474. *TEXAS LIVE STOCK SHIPPERS PROTECTIVE LEAGUE, FORT WORTH, TEX., v. DIRECTOR GENERAL, AS AGENT, ET AL.* Minimum carload weights on stock cattle. *B. D. Pelton* for complainant. *F. H. Wood*, *Baker*, *Botts*, *Parker & Garwood*, *M. G. Roberts*, *T. J. Freeman*, *C. Thompson*, *Dabney & King*, *Thompson*, *Barwise*, *Wharton & Hiner*, *Boyle*, *Ezell & Grover*, *T. J. Norton*, *F. E. Andrews*, *A. B. Enoch*, and *J. F. Finerty* for defendants. Dismissed on request of complainant, May 9, 1921.

12489. *AMERICAN NATIONAL LIVE STOCK ASSO. ET AL. v. A., T. & S. F. RY. Co. ET AL.* Rates on range or stock cattle from the southwest to the grazing and breeding sections of the northwest. *S. H. Cowan*, *S. C. Rowe*, and *T. W. Tomlinson* for complainants. *H. A. Scandrett*, *J. M. Souby*, *G. H. Smith*, *A. C. Spencer*, *E. B. Whitted*, *J. Q. Dier*, *T. J. Norton*, *F. E. Andrews*, *Thompson*, *Barwise*, *Wharton & Hiner*, *Winston*, *Strawn & Shaw*, *M. M. Joyce*, *D. Evans*, *F. G. Dorety*, *R. J. Hagman*, *R. H. Widdicombe*, *C. S. Burg*, and *A. P. Humbug* for defendants. Dismissed on request of complainants, March 22, 1921.

12521. *CLINCHFIELD PORTLAND CEMENT CORP. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on lime rock, in carloads, from Marcem and Speers Ferry, Va., to Kingsport, Tenn. *A. B. Hayes* for complainant. *O. J. Rixey* and *J. F. Finerty* for defendants. Dismissed on request of complainant, May 9, 1921.

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8632 and 8632 (Sub. Nos. 1 and 2). *SULEBERGER & Sons Co. v. C., R. I. & P. Ry. Co.* April 12, 1921. Reparation for \$3,996.36, on shipments of fresh meats from Kansas City, Kans., to Oklahoma City, Okla., on account of unreasonable rates.

9259. *WICHITA TRAFFIC BUREAU v. A., T. & S. F. Ry. Co.* April 12, 1921. Reparation for \$1,209.64, on shipments of newsprint paper from Chicago, Ill., and points taking the same rates, and from points in Minnesota to Wichita, Kans., on account of unreasonable rates.

9783. *SUMMERHAYS & Sons Co. v. A., T. & S. F. Ry. Co.* April 12, 1921. Reparation for \$1,367.14, on shipments of dry hides and sheep pelts from Salt Lake City, Utah, to Chicago, Ill., and Manistique, Mich., on account of unreasonable and unduly prejudicial rates.

10820. *SWIFT & Co. v. DIRECTOR GENERAL, AS AGENT.* April 12, 1921. Reparation for \$1,145.64, on shipments of manure from Camp Sherman, Ohio, to Parma, Ohio, on account of unreasonable rate.

11012. *SWIFT & Co. v. S. P. Co.* April 12, 1921. Reparation for \$5,285.88, on shipments of frozen meat from South San Francisco, Calif., to New York, N. Y., on account of unreasonable rate.

11086. *SEABOARD BY-PRODUCT COKE Co. v. D., L. & W. R. R. Co.* April 12, 1921. Reparation for \$18,107.97, on shipments of coal from mines in the Connells-ville, Pa., district to Seaboard, N. J., on account of unreasonable rates.

11039. *RIVERTON LIME Co. v. N. & W. Ry. Co.* April 12, 1921. Reparation for \$2,166.11, on shipments of lime and limestone at Carson (Riverton), Va., on account of unreasonable interplant switching charges.

11071. *CONGOLEUM Co. v. P. R. R. Co.* April 12, 1921. Reparation for \$954.33, on shipments of congoleum from Marcus Hook, Pa., to Oklahoma City, Okla., on account of unreasonable rates.

11152. *HORD ALKALI PRODUCTS Co. v. C., B. & Q. R. R. Co.* April 12, 1921. Reparation for \$15,296.23, on shipments of slack coal from Sheridan, Wyo., group of mines to Antioch, Hoffman, and Lakeside, Nebr., on account of unreasonable rates.

11249. *LUDLOW MFG. ASSO. v. P. & R. Ry. Co.* April 12, 1921. Reparation for \$351.32, on shipments of barley and culm coal from Mahanoy and Shamokin, Pa., districts to Ludlow, Mass., on account of unreasonable rates.

11280. *LUDLOW MFG. ASSO. v. B. & A. R. R. Co.* April 12, 1921. Reparation for \$3,304.27, on shipments of jute and jute butts from East Boston, Mass., to Ludlow Junction, Mass., on account of unreasonable rate.

10423 and 10423 (Sub-No. 1). *MISS. R. & B. T. Ry. v. B. & O. R. R. Co., and ST. JOSEPH LEAD Co. v. SAME.* May 9, 1921. Reparation for \$9,555.88, on shipments of coal from mines in southern Illinois to destinations on the M. R. & B. T. Ry. in Missouri, on account of unreasonable rates.

10470. *CANNON MFG. Co. v. S. Ry. Co.* May 9, 1921. Reparation for \$1,830.03, on tobacco shade cloth from Concord, N. C., to points in Connecticut and Massachusetts, on account of unreasonable rates.

10478, 10698, and 10698 (Sub-Nos. 1, 2, 3, 4, 5, and 6). LAKEWOOD RRA. Co. v. N. Y. C. R. R. Co., and SAME v. B. & O. R. R. Co. May 9, 1921. Reparation for \$19,618.42, on shipments of portable railway track from Cleveland, Ohio, to New York, N. Y., Greenville Piers, N. J., and Baltimore, Md., for export, on account of unreasonable rates.

10507. HOUSTON CHAMBER OF COMMERCE v. A. T. & S. F. RY. Co. May 9, 1921. Reparation for \$6,257.60, on shipments of copra from San Francisco and Oakland, Calif., to Houston and Dallas, Tex., on account of unreasonable rate.

10863. BOLDT Co. v. B. & O. R. R. Co. May 9, 1921. Reparation for \$5,364.71, on shipments of glass sand from Ottawa, Ill., and related points to Huntington and West Huntington, W. Va., on account of unreasonable rates.

11100 and 11100 (Sub-No. 1). LUKENS STEEL Co. v. P. R. R. Co. May 9, 1921. Reparation for \$2,731.66, on shipments of fluorspar from Baltimore and Locust Point, Md., to Coatesville, Pa., on account of unreasonable rate.

11195. OHIO CITIES GAS Co. v. C. R. R. Co. of N. J. May 9, 1921. Reparation for \$2,004.63 on shipments of sulphuric or sludge acid from Cabin Creek Junction, W. Va., to Carteret, N. J., on account of unreasonable rates.

11208. CONDON BAKING Co. v. A. C. L. R. R. Co. May 9, 1921. Reparation for \$547.03, on shipments of building tile and cement from North Charleston Port Terminals, S. C., to Charleston, S. C., on account of unreasonable rates.

11277. OZARK REF. Co. v. C. I. & P. RY. Co. May 9, 1921. Reparation for \$204.98, on shipments of oil from Billings, Okla., to Fort Smith, Ark., on account of unreasonable rate.

11374. CHAPIN-SACKS MFG. Co. v. DIRECTOR GENERAL. May 9, 1921. Reparation for \$453.63, on shipments of ice from Lancaster, Pa., to Washington, D. C., on account of unreasonable rate.

11400. ATLANTIC REF. Co. v. P. R. R. Co. May 9, 1921. Reparation for \$1,358.62, on shipments of naphtha from Ontario Street Station to Point Breeze Station in Philadelphia, Pa., on account of unreasonable rate.

NOTE.—The amount of reparation awarded in the above cases aggregates \$107,612.08.

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- CLOTH, HAIR PRESS:**
 Southeast from Houston, Tex., and to and from points in the southeast, 1.
 Texas and the southeast from Boston, Mass., New York, N. Y., Philadelphia, Pa., and related points, 1.
- CLOTH, WOOL PRESS:**
 Southeast from Houston, Tex., and to and from points in the southeast, 1.
 Texas and the southeast from Boston, Mass., New York, N. Y., Philadelphia, Pa., and related points, 1.

COAL:

Fenimore Junction, Fort Edward, Hudson Falls, Saratoga, Fort Ticonderoga, Crown Point, Whitehall, and Port Henry, N. Y. Demurrage, 424.
 Harrisonburg, Va. Switching, 667.
 Hillsboro, Ill. Switching, 435.
 Kentucky mines to Georgia, Alabama, Florida, Tennessee, Virginia, North Carolina, and South Carolina, 80.
 Kentucky mines to Jackson, Mich., 697.
 Piper, Ala., to Grasselli, Ala., 663.
 Pittsburgh, Pa., 753.

COAL, BITUMINOUS:

Illinois mines to Ohio and Michigan, 195.
 Kentucky mines to Toledo, Ohio, for transshipment by lake, 394.
 Ohio and Pennsylvania mines to various destinations. Divisions, 272.
 Springfield, Mo., from Belleville, Benton, Duquoin, Murphysboro, and other Illinois points, Quinnimont, W. Va., and Lily, Pa., 296.

COAL, LIGNITE. North Dakota. Increase in rates, 504 (508).

COAL, RAILROAD FUEL. Increased cost to railroads, 761.

COKE. Harrisonburg, Va. Switching, 667.

COMMODITY RATES:

El Paso, Tex., to north Pacific coast points, 689.

El Paso, Tex., from Wyoming, Colorado, and New Mexico, 689.

COMPOUNDS, SCOURING. Cincinnati, St. Bernard, and Ivorydale, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill., to the southeast, 700.

CONNECTIONS PIPE. Mississippi River crossings to Iowa, 530.

COPPER, BAR, PIG, AND UNREFINED. San Francisco and Oakland, Calif., from Garfield Smelter and International, Utah, and McGill, Nev., 374.

COPRA. Rolling Fork, Miss., to New Orleans, La., 627.

CORN. Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

COTTON:

Arizona to Massachusetts, Connecticut, Rhode Island, and Pennsylvania, 467.

Jackson, Tenn., to Cordova, Ala., 125.

COUPLINGS, PIPE. Mississippi River crossings to Iowa, 530.

CREAM. Arizona. Increase in rates, 572.

DAIRY PRODUCTS. Duluth, Minn., to Buffalo, N. Y. Refrigeration, 260.

DOBIES. Quinton, Okla., from St. Louis and Mexico, Mo., 43.

EGGS:

Duluth, Minn., to Buffalo, N. Y. Refrigeration, 260.

Illinois, Indiana, Iowa, Michigan, and Ohio to interstate destinations, 183.

ENGINES. Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

FITTINGS, PIPE:

Mississippi River crossings to Iowa, 530.

Okmulgee, Okla., to Illinois, Missouri, Kansas, and Texas, 33.

Wichita Falls, Tex., to Gahagan, La., 164.

FLOUR:

Arizona. Increase in rates, 572 (578).

Omaha, South Omaha, and Nebraska City, Nebr., and Council Bluffs, Iowa, to Duluth, Minn., Superior, Wis., and other points, 307.

FLUES, SECONDHAND BOILER. Port Arthur, Tex., to St. Louis, Mo., 29.

FLUX, ARIZONA. Increase in rates, 572 (581).

FOREST PRODUCTS:

Louisville, Ky., and Memphis, Tenn., from the south and southwest, transitted and reshipped to various points, 132.

Washington to various destinations, 406.

FRUIT:

Diversion and reconsignment rules, 885.

Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

FRUITS, CITRUS. Florida to various destinations. Refrigeration, 438.

FRUITS, FRESH. Los Angeles and San Francisco, Calif., to Bisbee and Douglas, Ariz., 623.

FUEL, RAILROAD. Increased cost to railroads, 761.

GENERATORS, ELECTRIC. Burkburnett, Tex., to Gahagan, La., 164.

GLASSES, JELLY. Oklahoma and Texas to Louisiana, Mississippi, Tennessee, Kentucky, Arkansas, and Alabama, 733.

GRAIN:

Cairo, Ill., from Illinois, Iowa, Nebraska, and Missouri, 219.

Cold Springs, Okla. Car distribution, 192.

North Dakota. Increase in rates, 504 (508).

Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

Omaha, South Omaha, and Nebraska City, Nebr., and Council Bluffs, Iowa, to Duluth, Minn., Superior, Wis., and other points, 307.

St. Louis, Mo., to Indiana and Kentucky, 256.

St. Louis, Mo., to Louisville, Ky., and Cincinnati, Ohio, 256.

GRAIN PRODUCTS. Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

GRAVEL. Arizona. Increase in rates, 572 (581).

HANDLES. Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

HAY. Covington, Ky. Demurrage, 658.

HIDES. Oklahoma City, Okla., Fort Worth, Tex., and other points to eastern points, 518 (523).

HIDES, GREEN SALTED. Rockford, Mich., from Chicago, Ill., and Racine and Milwaukee, Wis., 350.

ICE. Jacksonville, Fla., to Atlanta, Ga., 111.

IMPLEMENTS, AGRICULTURAL. Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

INGOTS, COPPER. San Francisco and Oakland, Calif., from Garfield Smelter and International, Utah, and McGill, Nev., 374.

IRON ARTICLES.

Grand Crossing and Chicago, Ill., and Ellwood City, Leechburg, and Pittsburgh, Pa., to San Francisco, Calif., or Seattle, Wash., for export, 64.

Louisiana from Galveston and Houston, Tex., 270.

Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

IRON, BAND. Grand Crossing and Chicago, Ill., and Ellwood City, Leechburg, and Pittsburgh, Pa., to San Francisco, Calif., or Seattle, Wash., for export, 64.

IRON, SCRAP:

Detroit, Mich., to Granite City, Ill., and St. Louis, Mo., 21.

St. Louis, Mo., from Port Arthur, Tex., and Carson, La., 29.

JARS, GLASS FRUIT. Oklahoma and Texas to Louisiana, Mississippi, Tennessee, Kentucky, Arkansas, and Alabama, 738.

KALE. Increased weights, 586.

LATH:

Oregon to California, 397.

Portland, Oreg., to San Francisco and other California points, 185.

LETTUCE. Increased weights, 586.

LIMESTONE:

Jamesville, N. Y., to Solvay, N. Y., 86.

Williamson, Pa., to Midland, Pa., 56.

LIMESTONE, GROUND. Bedford, Ind., to Streator, Ill., 51.

LINTERS, COTTON, UNCOMPRESSED. Louisville, Ky., to Atlanta, Ga., 736.

LITHOPONE:

Mineral Point, Wis., to Kansas City, Mo., and St. Paul and Minneapolis, Minn., 208.

St. Louis, Mo., Peoria and Chicago, Ill., and Mississippi River points to and from Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak., 208.

LIVE STOCK:

Arizona. Increase in rates, 572 (580).

Chicago, Ill. Loading and unloading, 228.

North Dakota. Increase in rates, 504 (508).

LOGS:

Baltimore, Mich., to Oconto and Stiles, Wis., 496.

Louisiana points. Loading and unloading, 211.

Oregon to California, 397.

LOGS, HARDWOOD. Mississippi to Dyersburg and Trimble, Tenn., 356.

LUMBER:

Arizona. Increase in rates, 572 (579).

Eagle, Colo. Demurrage, 49.

Louisville, Ky., and Memphis, Tenn., from the south and southwest, transited and reshipped to various points, 182.

Newark, N. J. Creosoting in transit, 145.

Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

Oregon to California, 397.

Washington to various destinations, 408.

LUMBER, FIR. Portland, Oreg., to San Francisco and other California points, 185.

LUMBER, HEMLOCK:

Boyne City, Mich., to Pennsylvania, 661.

Portland, Oreg., to San Francisco and other California points, 185.

LUMBER, OAK. Huntingburg, Ind., to Dayton, Ohio, 673.

LUMBER, PINE. Autaugaville, Ala., to western trunk line, central, and trunk line territories, Mississippi, Tennessee, and Kentucky, 563.

LUMBER PRODUCTS. Knoxville, Miss., to Louisiana, Tennessee, Kentucky, Wisconsin, Minnesota, Iowa, and Missouri, and central and eastern trunk line territories, 485.

LUMBER, YELLOW PINE. Knoxville, Miss., to Louisiana, Tennessee, Kentucky, Wisconsin, Minnesota, Iowa, and Missouri, and central and eastern trunk line territories, 485.

MACHINERY. Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

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- MANES, CAMELS'.** Vancouver, British Columbia, to New York, N. Y., 339.
- MANURE, STABLE.** Camp Sherman, Ohio, to Parma, Ohio, 567.
- MARL, WET.** Spring Harbor, Mich., to Union City, Mich., 169.
- MATT, COPPER.** San Francisco and Oakland, Calif., from Garfield Smelter and International, Utah, and McGill, Nev., 374.
- MEAL, ALFALFA.** Rupert, Idaho, to Utah, Oregon, Nebraska, Missouri, Illinois, Tennessee, New York, and Virginia, 475.
- MEAT, FRESH:**
 Cairo, Ill., and Ohio River crossings to the southeast, 610.
 Jacksonville and Florida Transfer, Fla., to Tampa, and other Florida points, originating in western territory, 461.
- MEATS, SALTED.** Jacksonville and Florida Transfer, Fla., to Tampa and other Florida points, originating in western territory, 461.
- MELONS.** Diversion and reconsignment rules, 385.
- MILK, ARIZONA.** Increase in rates, 572.
- MILK, EVAPORATED.** Wisconsin and Indiana to New Orleans, La., and Mobile, Ala., for export, 695.
- MOLASSES, BLACKSTRAP:**
 Mobile, Ala., to Cudahy, Wis., 107.
 Norfolk, Va., from New York, N. Y., and Philadelphia, Pa., 788.
- MOLYBDENUM.** Climax, Colo., to points on and east of Missouri River, via Denver, Colo., 369.
- NAILS.** Grand Crossing and Chicago, Ill., and Ellwood City, Leechburg, and Pittsburgh, Pa., to San Francisco, Calif., or Seattle, Wash., for export, 64.
- OIL.** Pittsburgh, Pa. Switching, 655.
- OIL, COAL TAR.** Chattanooga, Tenn., to Solvay, N. Y., 729.
- OIL, COCONUT.** Charleston, S. C., to Savannah, Ga., 454.
- OIL, PEANUT, SOLIDIFIED.** Atlanta, Ga., to Memphis, Tenn., Chicago, Ill., Harvey, La., Boston, Mass., and Jersey City, N. J., 457.
- OIL, SOYA-BEAN, SOLIDIFIED.** Atlanta, Ga., to Memphis, Tenn., Chicago, Ill., Harvey, La., Boston, Mass., and Jersey City, N. J., 457.
- OIL-WELL SUPPLIES.** Burkburnett, Tex., to Mansfield and Gahagan, La., 164.
- ONIONS.** Diversion and reconsignment rules, 385.
- ORE, COPPER.** Arizona. Increase in rates, 572 (580).
- ORE, IRON:**
 Pohatcong Railroad interchange tracks, near Oxford Furnace, N. J., to Oxford Furnace, N. J., 16.
 Roanoke, Va. Demurrage, 200.
- ORE, ZINC.** La Salle and Peru, Ill., from Joplin, Mo., Miami, Okla., and Platteville, Wis., districts, 92.
- OUTFITS, OIL WELL.** Burkburnett, Tex., to Mansfield and Gahagan, La., 164.
- OXIDE, ZINC.** Mineral Point, Wis., to Kansas City, Mo., and St. Paul and Minneapolis, Minn., 208.
- PACKING-HOUSE PRODUCTS.** Ottumwa, Iowa, to Memphis, Tenn., 153.
- PAPER, NEWSPRINT.** Sault Ste. Marie and Fort Frances, Ontario, and Minnesota, Wisconsin, and Michigan to the west and southwest, 709.
- PELTS.** Oklahoma City, Okla., Fort Worth, Tex., and other points to eastern points, 518 (523).
- PETROLATUM.** Petrolia, Pa., to Memphis, Tenn., via Ohio River crossings and Potomac Yard, Va., 197.
- PETROLEUM.** Blue Island, Ill., to Illinois, Wisconsin, Michigan, and Indiana, 568.

PETROLEUM PRODUCTS. Blue Island, Ill., to Illinois, Wisconsin, Michigan, and Indiana, 568.

PINEAPPLES, PRESERVED. Boston, Mass. Domestic storage charges, 85.

PIPE, CAST IRON. Oklahoma from Birmingham, Ala., Chattanooga, Tenn., and other southeastern points, 518 (523).

PIPE, WROUGHT. Oklahoma from Birmingham, Ala., Chattanooga, Tenn., and other southeastern points, 518 (523).

PIPE, WROUGHT IRON:

Mississippi River crossings to Iowa, 530.

Oklahoma to Texas, 33.

Wichita Falls, Tex., to Gahagan, La., 164.

PIPE, WROUGHT STEEL. Mississippi River crossings to Iowa, 530.

PITCH, FUEL, PAVING, AND ROOFING. Official classification territory, 719.

POLES, IRON ELECTRIC RAILWAY, TELEGRAPH, AND TELEPHONE. Mississippi River crossings to Iowa, 530.

POLES, STEEL ELECTRIC RAILWAY, TELEGRAPH, AND TELEPHONE. Mississippi River crossings to Iowa, 530.

POSTS, CEDAR FENCE. Oregon to California, 397.

POTATOES:

Diversion and reconsignment rules, 385.

Minnesota and Wisconsin to trunk line and Texas common-point territories. Rates and car-rental charges, 690.

Quamba, Minn., to various destinations. False floors, 515.

Rupert, Idaho, to Albuquerque, N. Mex., 475.

POULTRY, DRESSED:

Cairo, Ill., and Ohio River crossings to the southeast, 610.

Duluth, Minn., to Buffalo, N. Y. Refrigeration, 260.

Illinois, Indiana, Iowa, Michigan, and Ohio to interstate destinations, 183.

Jacksonville and Florida Transfer, Fla., to Tampa and other Florida points, originating in western territory, 461.

POWDERS, CLEANSING, SOAP, AND WASHING. Cincinnati, St. Bernard, and Ivorydale, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill., to the southeast, 700.

PULP, WOOD. Fenimore Junction, Fort Edward, Hudson Falls, Saratoga, Fort Ticonderoga, Crown Point, Whitehall, and Port Henry, N. Y. Demurrage, 424.

RAILS. Grand Crossing and Chicago, Ill., and Ellwood City, Leechburg, and Pittsburgh, Pa., to San Francisco, Calif., or Seattle, Wash., for export, 64.

RESIDUE, COPPER. San Francisco and Oakland, Calif., from Garfield Smelter and International, Utah, and McGill, Nev., 374.

ROCK, CRUSHED:

Arizona. Increase in rates, 572 (581).

Leeds, Mo., and Rosedale, Kans., to Kansas and Missouri, 602.

Monocacy, Pa., to Pennsylvania, Maryland, Delaware, and New Jersey, 46.

ROCK, WET PHOSPHATE. Alafia, Fla., to Agricola, Fla. Minimum charge, 751.

ROPE, WIRE. Wichita Falls, Tex., to Gahagan, La., 164.

ROSIN. Florida to Chicago and other points in Illinois, St. Paul, Minneapolis, and other points in Minnesota, and points in Wisconsin and Iowa, 23.

RUBBERS, BOAT. Wheeling, W. Va., to Wilmington, N. C., 343.

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SALT:

Detroit, Mich., to Virginia and Tennessee, 669.

San Francisco, Calif., from Burmester and Salduro, Utah, and Reno, Nev., 58.

SALTS, EPSOM. Atlanta, Ga., to Knoxville, Tenn., 607.

SAND. Arizona. Increase in rates, 572 (581).

SCOURING COMPOUNDS. See Compounds.

SHEEP. Cascade, Mont., to Chicago, Ill., stopped for grazing at Stone Lake, Wis., 109.

SHINGLES. Eagle, Colo. Demurrage, 49.

SISAL. New Orleans, La., to St. Louis, Mo., imported from Mexico, 841.

SKINS. Oklahoma City, Okla., Fort Worth, Tex., and other points to eastern points, 518 (523).

SLABS, COPPER. San Francisco and Oakland, Calif., from Garfield Smelter and International, Utah, and McGill, Nev., 374.

SOAPS. Cincinnati, St. Bernard and Ivorydale, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill., to the southeast, 700.

SODA, BICARBONATE OF. Alkali, Ohio, to Ohio, Indiana, Illinois, Kentucky, and Pennsylvania, 559.

SODA, CAUSTIC:

Alkali, Ohio to Ohio, Indiana, Illinois, Kentucky, and Pennsylvania, 559.
Saltville, Va., to central territory, 559.

SODA, NITRATE OF:

Baltimore, Md., to Ivorydale, Ohio, 692.

East St. Louis, Ill., from New York, N. Y., and Baltimore, Md., imported from Chile, 399.

Norfolk, Va., and Baltimore, Md., to Middletown Junction, Kings Mills, and Morrow, Ohio, 459.

Sandusky, Ohio, from New York, N. Y., and Baltimore, Md., 692.

SODA PRODUCTS:

Alkali, Ohio, to Ohio, Indiana, Illinois, Kentucky, and Pennsylvania, 559.
Saltville, Va., to central territory, 559.

SPELTER. Peru and La Salle, Ill., to eastern trunk line and New England territories, 92.

SPINACH. Increased weights, 586.

SPOKES, CLUB-TURNED. Memphis, Tenn., from Goodman, Bentonla, Yazoo City, and Valley, Miss., 88.

STEEL ARTICLES:

Grand Crossing and Chicago, Ill., and Ellwood City, Leechburg, and Pittsburgh, Pa., to San Francisco, Calif., or Seattle, Wash., for export, 64.

Louisiana from Galveston and Houston, Tex., 270.

Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.

STONE, CRUSHED. Monocacy, Pa., to Pennsylvania, 657.

SULPHATE, SMELTED. San Francisco and Oakland, Calif., from Garfield Smelter and International, Utah, and McGill, Nev., 374.

SULPHUR. Sulphur Mines, La., to Knoxville, Tenn., via Memphis, Tenn., 345.

SULPHUR, CRUDE. Canton docks, Baltimore, Md., to Gibbstown and Carney's Point, N. J., 605.

SWIVELS. Wichita Falls, Tex., to Gahagan, La., 164.

TAR, COAL. South Bethlehem, Pa., to Gray's Ferry, Philadelphia, Pa., 401.

TAR, PAVING AND ROOFING. Official classification territory, 719.

- TIES, RAILROAD.** Oregon to California, 397.
- TILE, HOLLOW BUILDING.** Great Falls, Mont., to Wyoming, 178.
- TIMBER.** KNOX, Miss., to Louisiana, Tennessee, Kentucky, Wisconsin, Minnesota, Iowa, and Missouri, and central and eastern trunk-line territories, 485.
- TIMBERS, MINING.** Oregon to California, 397.
- TOPS, FRUIT JAR.** Oklahoma and Texas to Louisiana, Mississippi, Tennessee, Kentucky, Arkansas, and Alabama, 733.
- TUBES, SECONDHAND BOILER.** Port Arthur, Tex., to St. Louis, Mo., 29.
- TUMBLERS.** Oklahoma and Texas to Louisiana, Mississippi, Tennessee, Kentucky, Arkansas, and Alabama, 733.
- TURNINGS, IRON.** Detroit, Mich., to Granite City, Ill., and St. Louis, Mo., 21.
- TURNINGS, STEEL.** Elmira, N. Y., to Charlotte, N. Y., Youngstown and Middletown, Ohio, and Johnstown, Saxton, and Brackenridge, Pa. Minimum weight, 363.
- TURPENTINE.** Florida to Chicago and other points in Illinois, St. Paul, Minneapolis, and other points in Minnesota, and points in Wisconsin and Iowa, 23.
- VEGETABLES:**
- Diversions and reconsignment rules, 385.
 - Florida to various destinations. Refrigeration, 438.
 - Los Angeles and San Francisco, Calif., to Bisbee and Douglas, Ariz., 623.
- VEHICLE MATERIAL.** Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.
- VEHICLE PARTS, SELF PROPELLING.** *See* Automobile Parts.
- WAGONS.** Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.
- WATERMELONS.** Ohio River crossings to and from Cumberland River landings, via Burnside, Ky., 10.
- WEDGES, MINE.** Oregon to California, 397.
- WOOD, FUEL.** Idaho, Oregon, and Washington to and from Idaho, Oregon, and Washington, 159.
- WOOD, KINDLING.** Oregon to California, 397.
- WOOD, PULP:**
- Fenimore Junction, Fort Edward, Hudson Falls, Saratoga, Fort Ticonderoga, Crown Point, Whitehall, and Port Henry, N. Y. Demurrage, 424.
 - Idaho, Oregon, and Washington to and from Idaho, Oregon, and Washington, 159.
- ZINC, CHLORIDE OF.** Official, southern, and western classification territories. Charges for return transportation of unloaded portions, 432.
- ZINC, ROLLED AND SHEET.** Peru and La Salle, Ill., to eastern trunk line and New England territories, 92.
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TABLE OF LOCALITIES.

[The number in parentheses after citation indicates where locality is considered.]

- Agricola, Fla., from Alafia, Fla. Minimum charge on wet phosphate rock, 751.
- Akron, Ohio, from Saltville, Va. Soda products, 559 (561).
- Alabama from Cincinnati, Ivorydale, and St. Bernard, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill. Soaps, washing, cleansing, and soap powders and scouring compounds, 700.
- Alabama to Florida. Fresh meats, dressed poultry, and salted meats, 461.
- Alabama from Kentucky mines. Coal, 80.
- Alabama from Oklahoma and Texas. Glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, 733.
- Alafia, Fla., to Agricola, Fla. Minimum charge on wet phosphate rock, 751.
- Albany, N. Y., from Minnesota and Wisconsin. Potatoes, 690.
- Albany, Wis., to New Orleans, La., and Mobile, Ala., for export. Evaporated milk, 695 (696).
- Albany Landing, Ky., to and from Ohio River crossings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Albuquerque, N. Mex., from all points east of the Rocky Mountains. Class and commodity rates, 226.
- Albuquerque, N. Mex., from Rupert, Idaho. Potatoes, 475.
- Alkali, Ohio, to Ohio, Indiana, Illinois, Kentucky, and Pennsylvania. Soda products, 559.
- Arizona. Increase in rates, fares, and charges, 572.
- Arizona to Massachusetts, Connecticut, Rhode Island, and Pennsylvania. Cotton, 467.
- Arkansas to and from eastern and southeastern points. Class and commodity rates, 518.
- Arkansas to Louisville, Ky., and Memphis, Tenn., transited and reshipped to various points. Lumber and forest products, 182.
- Arkansas from Oklahoma and Texas. Glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, 733.
- Arkansas from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Arkansas City, Kans., to Coffeyville, Kans. Spent sulphuric or sludge acid, 18.
- Ashland, Wis., to Detroit, Mich. Wood alcohol, 405.
- Athens, Fla., to Chicago and other points in Illinois, St. Paul, Minneapolis, and other points in Minnesota, and points in Wisconsin and Iowa. Rosin and turpentine, 23.
- Atlanta, Ga., from Jacksonville, Fla. Ice, 111.
- Atlanta, Ga., to Knoxville, Tenn. Epsom salts, 607.
- Atlanta, Ga., from Louisville, Ky. Uncompressed cotton linters, 736.
- Atlanta, Ga., to Memphis, Tenn., Chicago, Ill., Harvey, La., Boston, Mass., and Jersey City, N. J. Solidified soya-bean and peanut oil, 457.
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- Atlantic seaboard territory to Texas. Class and commodity rates, 740.
- Augusta, Ga., to Nashville and Memphis, Tenn., Ohio River crossings, and St. Louis, Mo. Class rates, 308 (336).
- Augusta, Kans., to Coffeyville, Kans. Spent sulphuric or sludge acid, 18.
- Autaugaville, Ala., to western trunk line, central and trunk line territories, Mississippi, Tennessee, and Kentucky. Pine lumber, 563.
- Baltimore, Md., to East St. Louis, Ill., imported from Chile. Nitrate of soda, 399.
- Baltimore, Md., to Middletown Junction, Kings Mills, and Morrow, Ohio. Nitrate of soda, 459.
- Baltimore, Md., from Minnesota and Wisconsin. Potatoes, 680.
- Baltimore, Md., from Oklahoma City, Okla., Fort Worth, Tex., and other points. Hides, pelts, and skins, 518 (523).
- Baltimore, Md., to Sandusky and Ivorydale, Ohio. Nitrate of soda, 692.
- Baltimore, Md., to and from Washington, D. C. Commutation tickets, 677.
- Baltimore, Md. (Canton docks), to Gibbstown and Carney's Point, N. J. Crude sulphur, 605.
- Baltimore, Mich., to Oconto and Stiles, Wis. Logs, 496.
- Bartlett, Ill., to Ohio and Michigan. Bituminous coal, 195.
- Bayonne, N. J., to Jersey Avenue Station, Jersey City, N. J. Asphaltum, 54.
- Beach, N. Dak., from Mason City, Iowa. Cement, 613.
- Bedford, Ind., from St. Louis, Mo. Grain, 256.
- Bedford, Ind., to Streator, Ill. Ground limestone, 51.
- Belleville, Ill., to Springfield, Mo. Bituminous coal, 296.
- Benton, Ill., to Springfield, Mo. Bituminous coal, 296.
- Bentonla, Miss., to Memphis, Tenn. Club-turned spokes, 88.
- Birmingham, Ala., to Oklahoma. Wrought and cast iron pipe, 518 (523).
- Bisbee, Ariz., from Los Angeles and San Francisco, Calif. Fresh fruits and vegetables, 623.
- Bismarck, N. Dak., from Mason City, Iowa. Cement, 613.
- Bloomer, Wis., to Texas common-point territory. Potatoes, 680.
- Bloomington, Ill., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Bluefield, Va., from Detroit, Mich. Salt, 669.
- Blue Island, Ill., to Illinois, Wisconsin, Michigan, and Indiana. Petroleum and products, 568.
- Bluffs, Ky., to and from Ohio River crossings, via Burnside Ky. Rail-and-water class and commodity rates, 10.
- Bonneville, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.
- Boston, Mass. Domestic storage charges on preserved pineapples, 85.
- Boston, Mass., from Atlanta, Ga. Solidified soya-bean and peanut oil, 457.
- Boston, Mass., from Minnesota and Wisconsin. Potatoes, 680.
- Boston, Mass., to Nashville, Tenn. Class rates, 308 (327).
- Boston, Mass., to Texas and the southeast. Hair and wool press cloth, 1.
- Boulevard, Fla., from Jacksonville and Florida Transfer, Fla., originating in western territory. Fresh meats, dressed poultry, and salted meats, 461.
- Boyer City, Mich., to Pennsylvania. Hemlock lumber, 661.
- Brackenridge, Pa., from Elmira, N. Y. Minimum on steel turnings, 363.
- Brainerd, Minn., from Mason City, Iowa. Cement, 613.
- Bristol, Tenn., from Detroit, Mich. Salt, 669.
- Bronson, Minn., from Mason City, Iowa. Cement, 613.
- Brooklyn, N. Y., to Salt Lake City, Utah. Cocoa butter, 113.

- Brooten, Minn., from Mason City, Iowa. Cement, 613 (618).
- Brunswick, Ga., to Nashville and Memphis, Tenn., Ohio River crossings, and St. Louis, Mo. Class rates, 308 (336).
- Buffalo, N. Y., from Duluth, Minn. Butter, dairy products, dressed poultry, and eggs; refrigeration, 260.
- Buffalo, N. Y., to La Crosse, Wis. Class and commodity rates, 289 (294).
- Buffalo, N. Y., from Minnesota and Wisconsin. Potatoes, 680.
- Buford, N. Dak., from Mason City, Iowa. Cement, 613.
- Burkburnett, Tex., to Mansfield and Gahagan, La. Oil-well outfits and supplies, and other articles, 164.
- Burkburnett, Tex., from Quay, Okla. Wrought-iron pipe, 33 (37).
- Burmester, Utah, to San Francisco, Calif. Salt, 58.
- Burnside, Ky., to and from Ohio River crossings, originating at or destined to Cumberland River landings. Rail-and-water class and commodity rates, 10.
- Butte, Mont., from all points east of the Rocky Mountains. Class and commodity rates, 226.
- Buxton, Oreg., to California. Cedar fence posts, 397.
- Cairo, Ill. Switching, 535.
- Cairo, Ill., from Illinois, Iowa, Nebraska, and Missouri. Grain, 219.
- Cairo, Ill., to the southeast. Fresh meats and dressed poultry, 610.
- California from Oregon. Cedar fence posts, 397.
- California from Portland, Oreg. Fir and hemlock lumber, and lath, 185.
- Camp Sherman, Ohio, to Parma, Ohio. Stable manure, 567.
- Canton docks, Baltimore, Md., to Gibbstown and Carney's Point, N. J. Crude sulphur, 605.
- Capitola, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Carbur, Fla., to Chicago and other points in Illinois, St. Paul, Minneapolis, and other points in Minnesota, and points in Wisconsin and Iowa. Rosin and turpentine, 23.
- Carney's Point, N. J., from Canton docks, Baltimore, Md. Crude sulphur, 605.
- Carolina territory to and from eastern and interior eastern points. Minimum charge on l. c. l. shipments, 727.
- Carolina territory to Nashville, Tenn. Class rates, 308 (327).
- Carrollton, Mo., from Okmulgee, Okla. Iron pipe fittings, 33.
- Carson, La., to St. Louis, Mo. Old boilers, 29.
- Cascade, Mont., to Chicago, Ill., stopped for grazing at Stone Lake, Wis. Sheep, 109.
- Casper, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.
- Cass Lake, Minn., from Mason City, Iowa. Cement, 613.
- Cedar Rapids, Iowa, from upper Mississippi River crossings. Iron and steel articles, 530.
- Central territory from Autaugaville, Ala. Pine lumber, 563.
- Central territory from Knoxo, Miss. Yellow-pine lumber, timber, and lumber products, 485.
- Central territory to La Crosse, Wis. Class and commodity rates, 289.
- Central territory from Norfolk, Va., and Baltimore, Md. Nitrate of soda, 459.
- Central territory from Saltville, Va. Soda products, 559.
- Chandler, Ariz., to Massachusetts, Connecticut, Rhode Island, and Pennsylvania. Cotton, 467.
- Charleston, S. C., to Nashville and Memphis, Tenn., Ohio River crossings, and St. Louis, Mo. Class rates, 308 (336).

- Charleston, S. C., from Norfolk, Va. Wooden truck barrels, 664.
 Charleston, S. C., to Savannah, Ga. Coconut oil, 454.
 Charlotte, N. C., to Greenville, S. C., and Selma; N. C. Sulphuric acid, 473.
 Charlotte, N. Y., from Elmira, N. Y. Minimum on steel turnings, 363.
 Chattanooga, Tenn., to Oklahoma. Wrought and cast iron pipe, 518 (523).
 Chattanooga, Tenn., to Solvay, N. Y. Coal-tar oil, 729.
 Chester, Pa., from Arizona. Cotton, 467.
 Chicago, Ill. Live stock; loading and unloading, 223.
 Chicago, Ill., from Atlanta, Ga. Solidified soya-bean and peanut oil, 457.
 Chicago, Ill., from Cascade, Mont., stopped for grazing at Stone Lake, Wis. Sheep, 109.
 Chicago, Ill., to Florida. Fresh meats, dressed poultry, and salted meats, 461.
 Chicago, Ill., to and from Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak. Lithopone, 208.
 Chicago, Ill., from Perry, Athena, Carbur, and Salem, Fla. Rosin and turpentine, 23.
 Chicago, Ill., to Rockford, Mich. Green salted hides, 350.
 Chicago, Ill., from Saltville, Va. Soda products, 559 (561).
 Chicago, Ill., to San Francisco, Calif., and Seattle, Wash., for export. Iron and steel articles, 64.
 Chicago, Ill., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
 Chicago, Ill., to the southeast. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
 Chicago switching district, Ill., to Illinois, Wisconsin, Michigan, and Indiana. Petroleum and products, 568.
 Ohle to New York, N. Y., and Baltimore, Md., reshipped to East St. Louis, Ill. Nitrate of soda, 399.
 Cincinnati, Ohio, to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
 Cincinnati, Ohio, from St. Louis, Mo. Grain, 256.
 Cincinnati, Ohio, from Saltville, Va. Soda products, 559 (561).
 Cincinnati, Ohio, to the southeast. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
 Clements, Kans., from Leeds, Mo., and Rosedale, Kans. Crushed rock, 602.
 Cleveland, Ohio, from Saltville, Va. Soda products, 559 (561).
 Cleveland, Okla., to Wichita Falls and Mag. Tex. Wrought-iron pipe, 33 (37).
 Clifton Forge, Va., from Detroit, Mich. Salt, 669.
 Climax, Colo., to points on and east of Missouri River, via Denver, Colo. Molybdenum, 369.
 Clover Hill, Miss., to Dyersburg and Trimble, Tenn. Hardwood logs, 355 (357).
 Coffeyville, Kans., from Arkansas City. Eldorado, Augusta, and Wichita, Kans. Spent sulphuric or sludge acid, 18.
 Cold Springs, Okla. Grain; car distribution, 192.
 Coleraine, Minn., from Mason City, Iowa. Cement, 613.
 Colorado to El Paso, Tex. Commodity rates, 689.
 Colorado from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
 Columbus, Ga., to Nashville and Memphis, Tenn., Ohio River crossings, and St. Louis, Mo. Class rates, 308 (336).
 Columbus, Ohio, from Saltville, Va. Soda products, 559 (561).
 Communipaw Station, Jersey City, N. J., from Whippany, N. J. Chipboard, 483.

- Connecticut from Arizona. Cotton, 467.
- Constable Hook, N. J., to Jersey Avenue Station, Jersey City, N. J. Asphaltum, 54.
- Coomers, Ky., to and from Ohio River crossings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Cordova, Ala., from Jackson, Tenn. Cotton, 125.
- Council Bluffs, Iowa, to Duluth, Minn., Superior, Wis., and other points. Grain and flour, 307.
- Covington, Ky. Demurrage on hay, 658.
- Crookston, Minn., from Mason City, Iowa. Cement, 613.
- Crown Point, N. Y. Demurrage on wood pulp, pulp wood, and coal, 424.
- Cudahy, Wis., from Mobile, Ala. Imported blackstrap molasses, 107.
- Culver, Minn., from Mason City, Iowa. Cement, 613.
- Culver, Ohio. Allowances, 117.
- Cumberland River landings to and from Ohio River crossings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Cushing, Okla., to Granford, Tex. Wrought-iron pipe, 33 (37).
- Dallas-Fort Worth group, Tex., from Okmulgee, Okla. Iron pipe fittings, 33.
- Danville, Ky., to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Darlington, B. I., from Arizona. Cotton, 467.
- Davenport, Iowa, from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Dayton, Ohio, from Huntingburg, Ind. Oak lumber, 673.
- Dayville, Conn., from Arizona. Cotton, 467.
- Decatur, Ill., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Deer River, Minn., from Mason City, Iowa. Cement, 613.
- Delavan, Wis., to New Orleans, La., and Mobile, Ala., for export. Evaporated milk, 695 (696).
- Delaware from Monocacy, Pa. Crushed rock, 46.
- Denver, Colo., to points on and east of Missouri River, originating at Climax, Colo. Molybdenum, 369.
- Denver, Colo., from Tulsa, Okla. Empty beer carriers, 61.
- Des Moines, Iowa, from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Des Moines, Iowa, from upper Mississippi River crossings. Iron and steel articles, 530.
- Detroit, Mich., from Ashland, Wis. Wood alcohol, 405.
- Detroit, Mich., to Granite City, Ill., and St. Louis, Mo. Scrap iron and iron turnings, 21.
- Detroit, Mich., to San Francisco, Calif. Self-propelling vehicle parts, 366.
- Detroit, Mich., to Virginia and Tennessee. Salt, 669.
- Devils Lake, N. Dak., from Mason City, Iowa. Cement, 613.
- Dickinson, N. Dak., from Mason City, Iowa. Cement, 613.
- Dietz, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.
- Douglas, Ariz., from Los Angeles and San Francisco, Calif. Fresh fruits and vegetables, 623.
- Dubuque, Iowa, from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Duluth, Minn., to Buffalo, N. Y. Butter, dairy products, dressed poultry, and eggs; refrigeration, 260.
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- Duluth, Minn., from Omaha, South Omaha, and Nebraska City, Nebr., and Council Bluffs, Iowa. Grain and flour, 307.
- Duquoin Ill., to Springfield, Mo. Bituminous coal, 296.
- Dyersburg, Tenn., from Mississippi. Hardwood logs, 355.
- Eagle, Colo. Demurrage on lumber and shingles, 49.
- East Fort Madison, Ill., from Okmulgee, Okla. Iron pipe fittings, 83.
- East St. Louis, Ill., to Florida. Fresh meats, dressed poultry, and salted meats, 461.
- East St. Louis, Ill., from New York, N. Y., and Baltimore, Md., imported from Chile. Nitrate of soda, 399.
- East St. Louis, Ill., from Saltville, Va. Soda products, 559 (561).
- Eastern cities to Nashville, Tenn. Class rates, 308 (327).
- Eastern points to and from Arkansas, Oklahoma, Louisiana, and Texas. Class and commodity rates, 518.
- Eastern points to and from Carolina, southeastern, and Mississippi Valley territories. Minimum charge on l. c. l. shipments, 727.
- Eastern points from the south and southwest, transited at Louisville, Ky., or Memphis, Tenn. Lumber and forest products, 182.
- Eastern trunk line territory from Knoxville, Miss. Yellow-pine lumber, timber, and lumber products, 485.
- Eastern trunk line territory to and from Michigan City, South Bend, Mishawaka, Elkhart, Goshen, and Nappanee, Ind. Class and commodity rates, 67.
- Eastern trunk line territory from Peru and La Salle, Ill. Spelter and sheet zinc, 92.
- Edge Moor, Del. Spotting service, 537.
- Egeland, N. Dak., from Mason City, Iowa. Cement, 613.
- Eldorado, Kans., to Coffeyville, Kans. Spent sulphuric or sludge acid, 18.
- Elkhart, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 67.
- Ellwood City, Pa., to San Francisco, Calif., and Seattle, Wash., for export. Iron and steel articles, 64.
- Elmira, N. Y., to Charlotte, N. Y., Youngstown and Middletown, Ohio, and Johnstown, Saxton, and Brackenridge, Pa. Minimum on steel turnings, 363.
- Elmira, N. Y., to New York, Ohio, and Pennsylvania. Minimum on steel turnings, 363.
- El Paso, Tex., to north Pacific coast points. Commodity rates, 689.
- El Paso, Tex., from Wyoming, Colorado, and New Mexico. Commodity rates, 689.
- Evansville, Ind., to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Evansville, Ind., from Saltville, Va. Soda products, 559 (561).
- Evansville, Minn., from Mason City, Iowa. Cement, 613.
- Fargo, N. Dak., from Mason City, Iowa. Cement, 613.
- Farmington, Ill., to Ohio and Michigan. Bituminous coal, 195.
- Fenimore Junction, N. Y. Demurrage on wood pulp, pulp wood, and coal, 424.
- Florida to Chicago and other points in Illinois, St. Paul, Minneapolis, and other points in Minnesota, and points in Wisconsin and Iowa. Rosin and turpentine, 23.
- Florida from Cincinnati, St. Bernard, and Ivorydale, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Florida from Kentucky mines. Coal, 80.

- Florida to various destinations. Refrigeration; citrus fruits and vegetables, 438.
- Florida from western territory. Fresh meats, dressed poultry, and salted meats, 461.
- Florida Transfer, Fla., to Tampa and other Florida points, originating in western territory. Fresh meats, dressed poultry, and salted meats, 461.
- Fordville, N. Dak., from Mason City, Iowa. Cement, 613.
- Fort Dodge, Iowa, from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Fort Dodge, Iowa, from upper Mississippi River crossings. Iron and steel articles, 530.
- Fort Edward, N. Y. Demurrage on wood pulp, pulp wood, and coal, 424.
- Fort Frances, Ontario, to the west and southwest. Newsprint paper, 709.
- Fort Ticonderoga, N. Y. Demurrage on wood pulp, pulp wood, and coal, 424.
- Fortuna, N. Dak., from Mason City, Iowa. Cement, 613.
- Fort Worth, Tex. Switching, 73; 77.
- Fort Worth, Tex., to eastern points. Hides, pelts, and skins, 518 (523).
- Fort Worth, Tex., from Okmulgee, Okla. Iron pipe fittings, 33.
- Frannie, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.
- Fulton-Peoria district, Ill., to Ohio and Michigan. Bituminous coal, 195.
- Gahagan, La., from Burkburnett and Wichita Falls, Tex. Oil-well outfits and supplies, and other articles, 164.
- Galveston, Tex., from Atlantic seaboard territory. Class and commodity rates, 740.
- Galveston, Tex., to Louisiana. Iron and steel articles, 270.
- Garfield Smelter, Utah, to San Francisco and Oakland, Calif. Unrefined copper, 374.
- Georgetown, Ky., from St. Louis, Mo. Grain, 256.
- Georgia from Cincinnati, St. Bernard, and Ivorydale, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Georgia from Kentucky mines. Coal, 80.
- Gibbstown, N. J., from Canton docks, Baltimore, Md. Crude sulphur, 605.
- Glade Springs, Va., from Detroit, Mich. Salt, 669.
- Glendale, Ariz., to Massachusetts, Connecticut, Rhode Island, and Pennsylvania. Cotton, 467.
- Glenwood, Minn., from Mason City, Iowa. Cement, 613.
- Goodman, Miss., to Memphis, Tenn. Club-turned spokes, 88.
- Goshen, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 67.
- Graford, Tex., from Cushing, Okla. Wrought-iron pipe, 33 (37).
- Grand Crossing, Ill., to San Francisco, Calif., and Seattle, Wash., for export. Iron and steel articles, 64.
- Granite City, Ill., from Detroit, Mich. Scrap iron and iron turnings, 21.
- Grantsburg, Wis., to trunk line and Texas common-point territories. Potatoes, 680.
- Grasselli, Ala., from Piper, Ala. Coal, 663.
- Gray's Ferry, Philadelphia, Pa., from South Bethlehem, Pa. Coal tar, 401.
- Great Falls, Mont., to Wyoming. Brick, hollow building tile, and fire clay, 178.
- Greenville, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.

- Greenville, Miss., to Monroe, La. Wall board, 203.
 Greenville, S. C., from Charlotte, N. C. Sulphuric acid, 473.
 Gulf ports to Nashville, Tenn. Class rates, 308 (326).
 Gum Pond, Miss., to Dyersburg and Trimble, Tenn. Hardwood logs, 355 (357).
 Hanna, Ill., to Ohio and Michigan. Bituminous coal, 195.
 Harriman shipyard, near Bristol, Pa. Spotting service, 214.
 Harrisonburg, Va. Switching of coal and coke, 667.
 Harvey, La. Demurrage, 173.
 Harvey, La., from Atlanta, Ga. Solidified soya-bean and peanut oil, 457.
 Hegewisch, Ill., to International Falls, Minn. Salt cake, 403.
 Hennessey, Okla., to Ranger and Olden, Tex. Wrought-iron pipe, 33 (37).
 Hillsboro, Ill. Coal, switching, 435.
 Holland, Mich., to and from eastern trunk line and New England territories.
 Class and commodity rates, 67.
 Hollywood, Miss., to Dyersburg and Trimble, Tenn. Hardwood logs, 355 (357).
 Hopkins, Minn. Switching, 646.
 Horatio, Ark., to New Orleans, La. Express rates on cantaloupes, 347.
 Houston, Tex., from Atlantic seaboard territory. Class and commodity rates,
 740.
 Houston, Tex., to Louisiana. Iron and steel articles, 270.
 Houston, Tex., to the southeast. Hair and wool press cloth, 1.
 Howard, Miss., to Dyersburg and Trimble, Tenn. Hardwood logs, 355 (357).
 Hudson Falls, N. Y. Demurrage on wood pulp, pulp wood, and coal, 424.
 Huntingburg, Ind., to Dayton, Ohio. Oak lumber, 673.
 Huntington, W. Va., from Minnesota and Wisconsin. Potatoes, 680.
 Idaho to and from Idaho, Oregon, and Washington. Fuel and pulp wood, and
 wood bolts, 159.
 Idaho to and from South Tacoma, Wash. Switching charge, 123.
 Illinois from Alkali, Ohio. Soda products, 559.
 Illinois from Blue Island, Ill. Petroleum and products, 563.
 Illinois to Cairo, Ill. Grain, 219.
 Illinois to interstate destinations. Dressed poultry, butter, eggs, and cheese, 183.
 Illinois from Okmulgee, Okla. Iron pipe fittings, 33.
 Illinois from Perry, Athena, Carbur, and Salem, Fla. Rosin and turpentine, 23.
 Illinois from Rupert, Idaho. Alfalfa meal, 475.
 Illinois from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Min-
 nesota, and Michigan. Newsprint paper, 709.
 Illinois to Springfield, Mo. Bituminous coal, 296.
 Illinois mines to Ohio and Michigan. Bituminous coal, 195.
 Indiana from Alkali, Ohio. Soda products, 559.
 Indiana from Blue Island, Ill. Petroleum and products, 563.
 Indiana to interstate destinations. Dressed poultry, butter, eggs, and cheese,
 183.
 Indiana to New Orleans, La., and Mobile, Ala., for export. Evaporated milk,
 695.
 Indiana from St. Louis, Mo. Grain, 256.
 Indiana Harbor, Ind., to Michigan City, Ind. Steel car-plates, 526.
 Indianapolis, Ind., to Florida. Fresh meats, dressed poultry, and salted meats,
 461.
 "Inner crescent" group, Ky., to Toledo, Ohio, for transshipment by lake.
 Bituminous coal, 394.
 Interior eastern points to and from Carolina, southeastern, and Mississippi
 Valley territories. Minimum charge on l. c. l. shipments, 727.

- Intermountain territory from all points east of the Rocky Mountains. Glass and commodity rates, 226.
- International, Utah, to San Francisco and Oakland, Calif. Unrefined copper, 374.
- International Falls, Minn., from Newell, Pa., and Hegewisch and West Hammond, Ill. Salt cake, 403.
- Iowa to Cairo, Ill. Grain, 219.
- Iowa to interstate destinations. Dressed poultry, butter, eggs, and cheese, 183.
- Iowa from Knoxo, Miss. Yellow-pine lumber, timber, and lumber products, 485.
- Iowa from Mississippi River crossings. Iron and steel articles, 530.
- Iowa from Perry, Athena, Carbur, and Salem, Fla. Rosin and turpentine, 23.
- Iowa from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Iowa to and from South Tacoma, Wash. Switching charge, 128.
- Iron Junction, Minn., from Mason City, Iowa. Cement, 613.
- Ivorydale, Ohio, from Baltimore, Md. Nitrate of soda, 692.
- Ivorydale, Ohio, to the southeast. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Jackson, Mich., from Kentucky mines. Coal, 697.
- Jackson, Tenn., to Cordova, Ala. Cotton, 125.
- Jacksonville, Fla., to Atlanta, Ga. Ice, 111.
- Jacksonville, Fla., to Nashville and Memphis, Tenn., Ohio River crossings, and St. Louis, Mo. Class rates, 308(336).
- Jacksonville, Fla., to Tampa and other Florida points, originating in western territory. Fresh meats, dressed poultry, and salted meats, 461.
- Jamestown, N. Dak., from Mason City, Iowa. Cement, 613.
- Jamesville, N. Y., to Solvay, N. Y. Limestone, 86.
- Jasper, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Jeffersonville, Ind., to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Jersey Avenue Station, Jersey City, N. J., from Bayonne, Constable Hook, and Warners, N. J. Asphaltum, 54.
- Jersey City, N. J., from Atlanta, Ga. Solidified soya-bean and peanut oil, 457.
- Jersey City, N. J., to the southeast. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Jersey City (Communipaw Station), N. J., from Whippany N. J. Chipboard, 483.
- Jersey City (Jersey Avenue Station), N. J., from Bayonne, Constable Hook, and Warners, N. J. Asphaltum, 54.
- Johnstown, Pa., from Elmira, N. Y. Minimum on steel turnings, 363.
- Johnstown, Pa., from Minnesota and Wisconsin. Potatoes, 680.
- Joliet, Ill., from Sault Ste. Marie, and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Joplin, Mo., district to Peru and La Salle, Ill. Zinc ore, 92.
- Junction City, Ky., to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Kansas from Leeds, Mo., and Rosedale, Kans. Crushed rock, 602.
- Kansas from Okmulgee, Okla. Iron pipe fittings, 83.
- Kansas from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
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- Kansas City, Kans., to Florida. Fresh meats, dressed poultry, and salted meats, 461.
- Kansas City, Kans., to the southeast. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Kansas City, Mo., from Mineral Point, Wis. Lithopone and zinc oxide, 208.
- Kansas City, Mo., from Okmulgee, Okla. Iron pipe fittings, 33.
- Kansas City, Mo., to and from St. Louis, Mo., Peoria and Chicago, Ill., and Mississippi River points. Lithopone, 208.
- Kansas City, Mo., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Kansas City, Mo., to the southeast. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Kenmare, N. Dak., from Mason City, Iowa. Cement, 613.
- Kentucky from Alkali, Ohio. Soda products, 559.
- Kentucky from Autaugaville, Ala. Pine lumber, 563.
- Kentucky from Cincinnati, St. Bernard, and Ivorydale, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Kentucky to Florida. Fresh meats, dressed poultry, and salted meats, 461.
- Kentucky from Knoxville, Miss. Yellow-pine lumber, timber, and lumber products, 485.
- Kentucky from Oklahoma and Texas. Glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, 733.
- Kentucky from St. Louis, Mo. Grain, 256.
- Kentucky mines to Georgia, Alabama, Florida, Tennessee, Virginia, North Carolina, and South Carolina. Coal, 80.
- Kentucky mines to Jackson, Mich. Coal, 697.
- Kentucky mines to Toledo, Ohio, for transshipment by lake. Bituminous coal, 394.
- Kettle River, Minn., from Mason City, Iowa. Cement, 613.
- Kimberly, Minn., from Mason City, Iowa. Cement, 613.
- Kings Mills, Ohio, from Norfolk, Va., and Baltimore, Md. Nitrate of soda, 459.
- Knox, Miss., to Louisiana, Tennessee, Kentucky, Wisconsin, Minnesota, Iowa, and Missouri, and central and eastern trunk line territories. Yellow-pine lumber, timber, and lumber products, 485.
- Knoxville, Tenn., from Atlanta, Ga. Epsom salts, 607.
- Knoxville, Tenn., from Sulphur Mines, La., via Memphis, Tenn. Sulphur, 345.
- Kona, Ky., to Jackson, Mich. Coal, 697.
- La Crosse, Wis., from trunk line, New England, and central territories. Class and commodity rates, 289.
- Lake City, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Lander, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.
- Larimore, N. Dak., from Mason City, Iowa. Cement, 613.
- La Salle, Ill., to eastern trunk line and New England territories. Spelter and sheet zinc, 92.
- La Salle, Ill., from Joplin, Mo., Miami, Okla., and Platteville, Wis., districts. Zinc ore, 92.
- Leechburg, Pa., to San Francisco, Calif., and Seattle, Wash., for export. Iron and steel articles, 64.
- Leeds, Mo., to Kansas and Missouri. Crushed rock, 602.

- Lexington, Ky., to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Lexington, Ky., from St. Louis, Mo. Grain, 256.
- Lily, Pa., to Springfield, Mo. Bituminous coal, 296.
- Lima, Ohio, from Saltville, Va. Soda products, 559 (561).
- Live Oak, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Lock No. 21, Ky., to and from Ohio River crossings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Logansport, Ind., from Saltville, Va. Soda products, 559 (561).
- Los Angeles, Calif., from all points east of the Rocky Mountains. Class and commodity rates, 226.
- Los Angeles, Calif., to Bisbee and Douglas, Ariz. Fresh fruits and vegetables, 623.
- Louisiana. Loading and unloading of logs, 211.
- Louisiana from Cincinnati, St. Bernard, and Ivorydale, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Louisiana to and from eastern and southeastern points. Class and commodity rates, 518.
- Louisiana from Galveston and Houston, Tex. Iron and steel articles, 270.
- Louisiana from Knoxville, Miss. Yellow-pine lumber, timber, and lumber products, 485.
- Louisiana to Louisville, Ky., and Memphis, Tenn., transited and reshipped to various points. Lumber and forest products, 132.
- Louisiana from Oklahoma and Texas. Glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, 733.
- Louisville, Ky., to Atlanta, Ga. Uncompressed cotton linters, 736.
- Louisville, Ky., to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Louisville, Ky., from St. Louis, Mo. Grain, 256.
- Louisville, Ky., from Saltville, Va. Soda products, 559 (561).
- Louisville, Ky., from the south and southwest, transited and reshipped to various points. Lumber and forest products, 132.
- Louisville, Ky., to the southeast. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Lynchburg, Va., from Minnesota and Wisconsin. Potatoes, 680.
- McGill, Nev., to San Francisco and Oakland, Calif. Unrefined copper, 374.
- Macon, Ga., to Nashville and Memphis, Tenn., Ohio River crossings, and St. Louis, Mo. Class rates, 308 (336).
- Madison, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Mag, Tex., from Cleveland, Okla. Wrought-iron pipe, 33 (37).
- Manitoba Junction, Minn., from Mason City, Iowa. Cement, 613.
- Mansfield, La., from Burkburnett and Wichita Falls, Tex. Oil-well outfits and supplies, and other articles, 164.
- Marshalltown, Iowa, from upper Mississippi River crossings. Iron and steel articles, 530.
- Maryland from Monocacy, Pa. Crushed rock, 46.
- Maryland to and from Washington, D. C. One-way, round-trip, and commutation fares, 302.
- Mason City, Iowa. Switching charge, 479.

- Mason City, Iowa, to North Dakota and Minnesota. Cement, 613.
- Mason City, Iowa, from upper Mississippi River crossings. Iron and steel articles, 530.
- Massachusetts from Arizona. Cotton, 487.
- Maud, Miss., to Dyersburg and Trimble, Tenn. Hardwood logs, 355 (357).
- Memphis, Tenn., from Atlanta, Ga. Solidified soya-bean and peanut oil, 457.
- Memphis, Tenn., from Goodman, Bentonla, Yazoo City, and Valley, Miss. Club-turned spokes, 88.
- Memphis, Tenn., to Knoxville, Tenn., originating at Sulphur Mines, La. Sulphur, 345.
- Memphis, Tenn., to and from Nashville, Tenn. Class rates, 308 (336).
- Memphis, Tenn., from Ottumwa, Iowa. Packing-house products, 153.
- Memphis, Tenn., from Petrolia, Pa., via Ohio River crossings and Potomac Yard, Va. Petrolatum, 197.
- Memphis, Tenn., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Memphis, Tenn., from the south and southwest, transited and reshipped to various points. Lumber and forest products, 132.
- Memphis, Tenn., from southeastern points. Class rates, 308 (336).
- Mereaux, La., to Milwaukee, Wis. Liquid asphalt, 420.
- Mesa, Ariz., to Massachusetts, Connecticut, Rhode Island, and Pennsylvania. Cotton, 487.
- Mexico to New Orleans, La., reshipped to St. Louis, Mo. Sisal, 341.
- Mexico, Mo., to Quinton, Okla. Fire brick, fire clay, and dobles, 48.
- Miami, Okla., district to Peru and La Salle, Ill. Zinc ore, 92.
- Michigan from Blue Island, Ill. Petroleum and products, 568.
- Michigan from Illinois mines. Bituminous coal, 195.
- Michigan to interstate destinations. Dressed poultry, butter, eggs, and cheese, 183.
- Michigan to the west and southwest. Newsprint paper, 709.
- Michigan City, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 67.
- Michigan City, Ind., from Indiana Harbor, Ind. Steel car plates, 523.
- Middle Grove, Ill., to Ohio and Michigan. Bituminous coal, 195.
- Middleton, Wis., to New Orleans, La., and Mobile, Ala., for export. Evaporated milk, 695 (696).
- Middletown, Ohio, from Elmira, N. Y. Minimum on steel turnings, 363.
- Middletown Junction, Ohio, from Norfolk, Va., and Baltimore, Md. Nitrate of soda, 459.
- Midland, Pa., from Williamson, Pa. Limestone, 56.
- Milwaukee, Wis., from Mereaux, La. Liquid asphalt, 420.
- Milwaukee, Wis., to Rockford, Mich. Green salted hides, 350.
- Mineral Point, Wis., to Kansas City, Mo., and St. Paul and Minneapolis, Minn. Lithopone and zinc oxide, 208.
- Minneapolis, Minn. Switching, 646.
- Minneapolis, Minn., from Mineral Point, Wis. Lithopone and zinc oxide, 208.
- Minneapolis, Minn., from Perry, Athena, Carbur, and Salem, Fla. Rosin and turpentine, 23.
- Minnesota from Knoxo, Miss. Yellow-pine lumber, timber, and lumber products, 485.
- Minnesota from Mason City, Iowa. Cement, 613.
- Minnesota from Perry, Athena, Carbur, and Salem, Fla. Rosin and turpentine, 23.

- Minnesota from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Minnesota to and from South Tacoma, Wash. Switching charge, 128.
- Minnesota to trunk line and Texas common-point territories. Potatoes, 690.
- Minnesota to the west and southwest. Newsprint paper, 709.
- Minot, N. Dak., from Mason City, Iowa. Cement, 618.
- Mishawaka, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 67.
- Mississippi from Autaugaville, Ala. Pine lumber, 563.
- Mississippi from Cincinnati, St. Bernard, and Ivorydale, Ohio, Port Ivory, N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Mississippi to Dyersburg and Trimble, Tenn. Hardwood logs, 855.
- Mississippi to Florida. Fresh meats, dressed poultry, and salted meats, 461.
- Mississippi from Oklahoma and Texas. Glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, 738.
- Mississippi from Texas. Cane and logging cars, 518 (522).
- Mississippi River crossings to Iowa. Iron and steel articles, 530.
- Mississippi River points to and from Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak. Lithopone and zinc oxide, 208.
- Mississippi Valley territory to and from eastern and interior eastern points. Minimum charge on l. c. l. shipments, 727.
- Missouri to Cairo, Ill. Grain, 219.
- Missouri from Knoxville, Miss. Yellow-pine lumber, timber, and lumber products, 485.
- Missouri from Leeds, Mo., and Rosedale, Kans. Crushed rock, 602.
- Missouri to Louisville, Ky., and Memphis, Tenn., transited and reshipped to various points. Lumber and forest products, 132.
- Missouri from Okmulgee, Okla. Iron pipe fittings, 33.
- Missouri from Rupert, Idaho. Alfalfa meal, 475.
- Missouri from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Missouri River, points on and east of, from Climax, Colo., via Denver, Colo., Molybdenum, 369.
- Moberly, Mo., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Mobile, Ala., to Cudahy, Wis. Imported blackstrap molasses, 107.
- Mobile, Ala., to Nashville, Tenn. Class rates, 308 (326).
- Mobile, Ala., from Wisconsin and Indiana, for export. Evaporated milk, 665.
- Monocacy, Pa., to Pennsylvania. Crushed stone, 657.
- Monocacy, Pa., to Pennsylvania, Maryland, Delaware, and New Jersey. Crushed rock, 46.
- Monroe, La., from Greenville, La. Wall board, 203.
- Montana. Passenger fares and excess-baggage charges, 500.
- Montgomery, Ala., to Nashville and Memphis, Tenn., Ohio River crossings and St. Louis, Mo. Class rates, 308 (336).
- Monticello, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- Morrow, Ohio, from Norfolk, Va., and Baltimore, Md. Nitrate of soda, 459.
- Mud Camp, Ky., to and from Ohio River crossings via Burnside Ky. Rail-and-water class and commodity rates, 10.
- Murphysboro, Ill., to Springfield, Mo. Bituminous coal, 296.

- Myer's Landing, Tenn., to and from Ohio River crossings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Mystic Wharf, Boston, Mass. Domestic storage charges on preserved pineapples, 85.
- Nappanee, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 67.
- Nashua, Minn., from Mason City, Iowa. Cement, 613.
- Nashville, Tenn., to and from southeastern points. Class rates, 308.
- Nebraska to Cairo, Ill. Grain, 219.
- Nebraska from Rupert, Idaho. Alfalfa meal, 475.
- Nebraska from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Nebraska City, Nebr., to Duluth, Minn., Superior, Wis., and other points. Grain and flour, 307.
- New Albany, Ind., to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Newark, N. J. Lumber; creosoting in transit, 145.
- New Bedford, Mass., from Arizona. Cotton, 467.
- Newcastle, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.
- Newell, Pa., to International Falls, Minn. Salt cake, 403.
- New England territory to La Crosse, Wis. Class and commodity rates, 289.
- New England territory to and from Michigan City, South Bend, Mishawaka, Elkhart, Goshen, and Nappanee, Ind. Class and commodity rates, 67.
- New England territory from Peru and La Salle, Ill. Spelter and sheet zinc, 92.
- New Jersey from Monocacy, Pa. Crushed rock, 46.
- New Mexico to El Paso, Tex. Commodity rates, 689.
- New Orleans, La. Handling charges, 379.
- New Orleans, La., from Horatio, Ark. Express rates on cantaloupes, 347.
- New Orleans, La., to Nashville, Tenn. Class rates, 308 (326).
- New Orleans, La., from Rolling Fork, Miss. Copra, 627.
- New Orleans, La., to St. Louis, Mo., imported from Mexico. Sisal, 341.
- New Orleans, La., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- New Orleans, La., from Wisconsin and Indiana, for export. Evaporated milk, 685.
- New Orleans district, La. Handling charges, 379.
- New York from Elmira, N. Y. Minimum on steel turnings, 363.
- New York from Rupert, Idaho. Alfalfa meal, 475.
- New York, N. Y., to Boston, Mass., for export, subsequently sold in Boston, Mass. Preserved pineapples, 85.
- New York, N. Y., to East St. Louis, Ill. Imported from Chile. Nitrate of soda, 399.
- New York, N. Y., to La Crosse, Wis. Class and commodity rates, 289 (290).
- New York, N. Y., from Minnesota and Wisconsin. Potatoes, 680.
- New York, N. Y., to Nashville, Tenn. Class rates, 308 (327).
- New York, N. Y., to Norfolk, Va. Blackstrap molasses, 738.
- New York, N. Y., from Peru and La Salle, Ill. Spelter and sheet zinc, 92 (103).
- New York, N. Y., to Salt Lake City, Utah. Cocoa butter, 113.
- New York, N. Y., to Sandusky, Ohio. Nitrate of soda, 692.
- New York, N. Y., to Texas. Class and commodity rates, 740.
- New York, N. Y., to Texas and the southeast. Hair and wool press cloth, 1.
- New York, N. Y., from Vancouver, British Columbia. Camel's manes, 339.

- Nicholasville, Ky, to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Norfolk, Va., to Charleston, S. C. Wooden truck barrels, 664.
- Norfolk, Va., to Middletown Junction, King's Mills, and Morrow, Ohio. Nitrate of soda, 459.
- Norfolk, Va., from Minnesota and Wisconsin. Potatoes, 680.
- Norfolk, Va., from New York, N. Y., and Philadelphia, Pa. Blackstrap molasses, 738.
- North Adams, Mass., from Arizona. Cotton, 467.
- North Carolina from Kentucky mines. Coal, 80.
- North Dakota. Increase in rates, 504.
- North Dakota from Mason City, Iowa. Cement, 618.
- North Dakota to and from South Tacoma, Wash. Switching charge, 128.
- Northern points from the south and southwest, transited at Louisville, Ky., or Memphis, Tenn. Lumber and forest products, 132.
- North Fort Worth, Tex., to Florida. Fresh meats, dressed poultry, and salted meats, 461.
- North Pacific coast points from El Paso, Tex. Commodity rates, 689.
- North Vernon, Ind., from St. Louis, Mo. Grain, 256.
- Oakland, Calif., from Garfield Smelter and International, Utah, and McGill, Nev. Unrefined copper, 374.
- Oakland City, Ind., from St. Louis, Mo. Grain, 256.
- Oconto, Wis., from Baltimore, Mich. Logs, 496.
- Official classification territory. Roofing and paving tars, and pitches and fuel pitch, 719.
- Official classification territory. Sulphuric acid and chloride of zinc; return transportation of unloaded portions, 432.
- Ohio from Alkali, Ohio. Soda products, 559.
- Ohio from Elmira, N. Y. Minimum on steel turnings, 363.
- Ohio to Florida. Fresh meats, dressed poultry, and salted meats, 461.
- Ohio from Illinois mines. Bituminous coal, 195.
- Ohio to interstate destinations. Dressed poultry, butter, eggs, and cheese, 188.
- Ohio mines to various destinations. Bituminous coal; divisions, 272.
- Ohio River crossings to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Ohio River crossings from Petrolia, Pa., destined to Memphis, Tenn. Petroleum, 197.
- Ohio River crossings to the southeast. Fresh meats and dressed poultry, 610.
- Ohio River crossings from southeastern points. Class rates, 306 (336).
- Oklahoma from Birmingham, Ala., Chattanooga, Tenn., and other southeastern points. Wrought and cast iron pipe, 518 (523).
- Oklahoma to and from eastern and southeastern points. Class and commodity rates, 518.
- Oklahoma to Louisiana, Mississippi, Tennessee, Kentucky, Arkansas, and Alabama. Glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, 733.
- Oklahoma to Louisville, Ky., and Memphis, Tenn., transited and reshipped to various points. Lumber and forest products, 132.
- Oklahoma from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Oklahoma to Texas. Wrought-iron pipe, 33 (36).
- Oklahoma City, Okla., to eastern points. Hides, pelts, and skins, 518 (523).
- Oklmulgee, Okla., to Illinois, Missouri, Kansas, and Texas. Iron pipe fittings 83.
- Olden, Tex., from Hennessy, Okla. Wrought-iron pipe, 33 (37).

- Omaha, Nebr., to Duluth, Minn., Superior, Wis., and other points. Grain and flour, 807.
- Omaha, Nebr., to and from St. Louis, Mo., Peoria and Chicago, Ill., and Mississippi River points. Lithopone, 208.
- Omaha, Nebr., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Oneida, Tenn., to and from Cumberland River landings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Oregon to California. Cedar fence posts, 397.
- Oregon to and from Idaho, Oregon, and Washington. Fuel and pulp wood, and wood bolts, 159.
- Oregon from Rupert, Idaho. Alfalfa meal, 475.
- Orin Junction, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.
- Ottawa, Ontario, to Covington, Ky. Hay, 658.
- Ottumwa, Iowa, to Memphis, Tenn. Packing-house products, 153.
- Ottumwa, Iowa, from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Ottumwa, Iowa, from upper Mississippi River crossings. Iron and steel articles, 530.
- Oxford Furnace, N. J., from Pohatcong R. R. interchange tracks near Oxford Furnace, N. J. Iron ore, 16.
- Pacific coast cities from all points east of the Rocky Mountains. Class and commodity rates, 226.
- Pacific coast points from El Paso, Tex. Commodity rates, 689.
- Paris, Ky., from St. Louis, Mo. Grain, 256.
- Parkersburg, W. Va., from Minnesota and Wisconsin. Potatoes, 680.
- Parkman, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.
- Parkville, Mo., from Leeds, Mo., and Rosedale, Kans. Crushed rock, 602.
- Parma, Ohio, from Camp Sherman, Ohio. Stable manure, 587.
- Pembina, N. Dak., from Mason City, Iowa. Cement, 613.
- Pennsylvania from Alkali, Ohio. Soda products, 559.
- Pennsylvania from Arizona. Cotton, 467.
- Pennsylvania from Boyne City, Mich. Hemlock lumber, 661.
- Pennsylvania from Elmira, N. Y. Minimum on steel turnings, 363.
- Pennsylvania from Monocacy, Pa. Crushed rock, 46.
- Pennsylvania from Monocacy, Pa. Crushed stone, 657.
- Pennsylvania mines to various destinations. Bituminous coal; divisions, 272.
- Pensacola, Fla., to Nashville, Tenn. Class rates, 308 (326).
- Penton, Miss., to Dyersburg and Trimble, Tenn. Hardwood logs, 355 (357).
- Peoria, Ill., to and from Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak. Lithopone, 208.
- Perry, Fla., to Chicago and other points in Illinois, St. Paul, Minneapolis, and other points in Minnesota, and points in Wisconsin and Iowa. Rosin and turpentine, 23.
- Perry, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing and soap powders, and scouring compounds, 700.
- Peru, Ill., to eastern trunk line and New England territories. Spelter and sheet zinc, 92.
- Peru, Ill., from Joplin, Mo., Miami, Okla., and Platteville, Wis., districts. Zinc ore, 92.
- Petersburg, Va., from Detroit, Mich. Salt, 669.

- Petrolia, Pa., to Memphis, Tenn., via Ohio River crossings and Potomac Yard, Va. Petrolatum, 197.
- Pelphs, Ky., to and from Ohio River crossings, via Burnside, Ky. Rail-and-water class and commodity rates, 10.
- Philadelphia, Pa., from Minnesota and Wisconsin. Potatoes, 680.
- Philadelphia, Pa., to Norfolk, Va. Blackstrap molasses, 738.
- Philadelphia, Pa., to Salt Lake City, Utah. Cocoa butter, 113.
- Philadelphia, Pa., to Texas. Class and commodity rates, 740.
- Philadelphia, Pa., to Texas and the southeast. Hair and wool press cloth, 1.
- Philadelphia (Gray's Ferry), Pa., from South Bethlehem, Pa. Coal tar, 401.
- Phoenix, Ariz., from all points east of the Rocky Mountains. Class and commodity rates, 226.
- Phoenix, Ariz., to Massachusetts, Connecticut, Rhode Island, and Pennsylvania. Cotton, 467.
- Piper, Ala., to Grassell, Ala. Coal, 663.
- Pittsburgh, Pa. Intraplant movement of coal, 753.
- Pittsburgh, Pa. Switching of oil, 655.
- Pittsburgh, Pa., to La Crosse, Wis. Class and commodity rates, 289 (290).
- Pittsburgh, Pa., from Minnesota and Wisconsin. Potatoes, 680.
- Pittsburgh, Pa., to San Francisco, Calif., and Seattle, Wash., for export. Iron and steel articles, 64.
- Platteville, Wis., district to Peru and La Salle, Ill. Zinc ore, 92.
- Pohatcong R. R. interchange tracks, near Oxford Furnace, N. J., to Oxford Furnace, N. J. Iron ore, 16.
- Portage Lake, Minn., from Mason City, Iowa. Cement, 613.
- Port Arthur, Tex., to St. Louis, Mo. Secondhand boiler flues and tubes, 29.
- Port Henry, N. Y. Demurrage on wood pulp, pulp wood, and coal, 424.
- Port Houston, Tex., from Atlantic seaboard territory. Class and commodity rates, 740.
- Port Ivory, N. Y., to the southeast. Soaps, washing, cleansing and soap powders, and scouring compounds, 700.
- Portland, Oreg., from all points east of the Rocky Mountains. Class and commodity rates, 226.
- Portland, Oreg., to San Francisco and other California points. Fir and hemlock lumber and lath, 185.
- Port Tampa, Fla., from Jacksonville and Florida Transfer, Fla., originating in western territory. Fresh meats, dressed poultry, and salted meats, 461.
- Port Tampa City, Fla., from Jacksonville and Florida Transfer, Fla., originating in western territory. Fresh meats, dressed poultry, and salted meats, 461.
- Potomac Yard, Va., from Petrolia, Pa., destined to Memphis, Tenn. Petrolatum, 197.
- Powder River, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 173.
- Princeton, Ind., from St. Louis, Mo. Grain, 256.
- Princeton group, Minn., to trunk line and Texas common-point territories. Potatoes, 680.
- Proctor, Minn., from Mason City, Iowa. Cement, 613.
- Putman, Conn., from Arizona. Cotton, 467.
- Quamba, Minn., to various destinations. Potatoes; false floors, 515.
- Quay, Okla., to Burkburnett and Wichita Falls, Tex. Wrought-iron pipe, 83 (37).
- Quincy, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing and soap powders, and scouring compounds, 700.
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- Quincy, Ill., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Quinnamount, W. Va., to Springfield, Mo. Bituminous coal, 296.
- Quinton, Okla., from St. Louis and Mexico, Mo. Fire brick, fire clay, and dobles, 43.
- Racine, Wis., to Rockford, Mich. Green salted hides, 350.
- Racine, Wis., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Ranchester, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.
- Ranger, Tex., from Tribby, Shamrock, and Hennessey, Okla. Wrought-iron pipe, 33 (37).
- Reedsburg, Wis., to New Orleans, La., and Mobile, Ala., for export. Evaporated milk, 695 (696).
- Reno, Nev., from all points east of the Rocky Mountains. Class and commodity rates, 226.
- Reno, Nev., to San Francisco, Calif. Salt, 58.
- Rhode Island from Arizona. Cotton, 467.
- Richmond, Va., from Detroit, Mich. Salt, 669.
- Roanoke, Va. Iron ore; demurrage, 200.
- Roanoke, Va., from Detroit, Mich. Salt, 669.
- Rochester, N. Y., from Minnesota and Wisconsin. Potatoes, 680.
- Rockford, Ill., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Rockford, Mich., from Chicago, Ill., and Racine and Milwaukee, Wis. Green salted hides, 350.
- Rock Springs, Wyo., to Storey, Calif. Range cattle, 671.
- Rolling Fork, Miss., to New Orleans, La. Copra, 627.
- Rosedale, Kans., to Kansas and Missouri. Crushed rock, 602.
- Rugby, N. Dak., from Mason City, Iowa. Cement, 613.
- Rupert, Idaho, to Albuquerque, N. Mex. Potatoes, 475.
- Rupert, Idaho, from San Francisco, Calif. Second-hand bags, 475.
- Rupert, Idaho, to Utah, Oregon, Nebraska, Missouri, Illinois, Tennessee, New York, and Virginia. Alfalfa meal, 475.
- Saginaw, Mich., from Saltville, Va. Soda products, 559 (561).
- St. Bernard, Ohio, to the southeast. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
- St. Joseph, Mo., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- St. Louis, Mo., from Detroit, Mich. Scrap iron and iron turnings, 21.
- St. Louis, Mo., to Indiana and Kentucky. Grain, 256.
- St. Louis, Mo., to and from Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak. Lithopone, 208.
- St. Louis, Mo., to Louisville, Ky., and Cincinnati, Ohio. Grain, 256.
- St. Louis, Mo., to and from Nashville, Tenn. Class rates, 308 (336).
- St. Louis, Mo., from New Orleans, La., imported from Mexico. Sisal, 341.
- St. Louis, Mo., from Okmulgee, Okla. Iron pipe fittings, 33.
- St. Louis, Mo., from Port Arthur, Tex., and Carson, La. Scrap iron, 29.
- St. Louis, Mo., to Quinton, Okla. Fire brick, fire clay, and dobles, 43.
- St. Louis, Mo., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- St. Louis, Mo., to the southeast. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.

- St. Louis, Mo., from southeastern points. Class rates, 308 (336).
 St. Louis Park, Minn. Switching, 646.
 St. Paul, Minn., from Mineral Point, Wis. Lithopone and zinc oxide, 208.
 St. Paul, Minn., from Perry, Athena, Carbur, and Salem, Fla. Rosin and turpentine, 23.
 St. Paul, Minn., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
 Salduro, Utah, to San Francisco, Calif. Salt, 58.
 Salem, Fla., to Chicago and other points in Illinois, St. Paul, Minneapolis, and other points in Minnesota, and points in Wisconsin and Iowa. Rosin and turpentine, 23.
 Salt Lake City, Utah, from all points east of the Rocky Mountains. Class and commodity rates, 226.
 Salt Lake City, Utah, from New York and Brooklyn, N. Y., and Philadelphia, Pa. Cocoa butter, 118.
 Salt River Valley, Ariz., to Massachusetts, Connecticut, Rhode Island, and Pennsylvania. Cotton, 467.
 Saltville, Va., to central territory. Soda products, 559.
 Sandusky, Ohio, from New York, N. Y., and Baltimore, Md. Nitrate of soda, 692.
 San Francisco, Calif., from all points east of the Rocky Mountains. Class and commodity rates, 226.
 San Francisco, Calif., to Bisbee and Douglas, Ariz. Fresh fruits and vegetables, 623.
 San Francisco, Calif., from Burmester and Salduro, Utah, and Reno, Nev. Salt, 58.
 San Francisco, Calif., from Detroit, Mich. Self-propelling vehicle parts, 366.
 San Francisco, Calif., from Garfield Smelter and International, Utah, and McGill, Nev. Unrefined copper, 374.
 San Francisco, Calif., from Grand Crossing and Chicago, Ill., and Ellwood City, Leechburg, and Pittsburgh, Pa. Iron and steel articles, 64.
 San Francisco, Calif., from Portland, Oreg. Fir and hemlock lumber, and lath, 185.
 San Francisco, Calif., to Rupert, Idaho. Secondhand bags, 475.
 Saratoga, N. Y. Demurrage on wood pulp, pulp wood, and coal, 424.
 Sauk Center, Minn., from Mason City, Iowa. Cement, 618.
 Sauk Rapids, Minn., from Mason City, Iowa. Cement, 618.
 Sault Ste. Marie, Ontario, to the west and southwest. Newsprint paper, 709.
 Savannah, Ga., from Charleston, S. C. Coconut oil, 454.
 Savannah, Ga., to Nashville and Memphis, Tenn., Ohio River crossings and St. Louis, Mo. Class rates, 306 (336).
 Saxton, Pa., from Elmira, N. Y. Minimum on steel turnings, 366.
 Seattle, Wash., from all points east of the Rocky Mountains. Class and commodity rates, 226.
 Seattle, Wash., from Grand Crossing and Chicago, Ill., and Ellwood City, Leechburg, and Pittsburgh, Pa. Iron and steel articles, 64.
 Selma, Ala., to Nashville and Memphis, Tenn., Ohio River crossings, and St. Louis, Mo. Class rates, 308 (336).
 Selma, N. C., from Charlotte, N. C. Sulphuric acid, 473.
 Shamrock, Okla., to Ranger, Tex. Wrought-iron pipe, 83 (37).
 Sheridan, Ind., to New Orleans, La., for export. Evaporated milk, 695 (696).
 Sheridan, Wyo., from Great Falls, Mont. Brick, hollow building tile, and fire clay, 178.

- Shreveport, La., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Sioux City, Iowa, to and from St. Louis, Mo., Peoria and Chicago, Ill., and Mississippi River points. Lithopone, 208.
- Sioux City, Iowa, from upper Mississippi River crossings. Iron and steel articles, 530.
- Sioux Falls, S. Dak., to and from St. Louis, Mo., Peoria and Chicago, Ill., and Mississippi River points. Lithopone, 208.
- Solvay, N. Y., from Chattanooga, Tenn. Coal-tar oil, 729.
- Solvay, N. Y., from Jamesville, N. Y. Limestone, 86.
- South Bend, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 67.
- South Bethlehem, Pa., to Gray's Ferry, Philadelphia, Pa. Coal tar, 401.
- South Carolina from Kentucky mines. Coal, 80.
- South Dakota from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- South Dakota to and from South Tacoma, Wash. Switching charges, 128.
- Southeast from Boston, Mass., New York, N. Y., Philadelphia, Pa., and related points, and Houston, Tex. Hair and wool press cloth, 1.
- Southeast to and from other points in the southeast. Hair and wool press cloth, 1.
- Southeastern points to and from Arkansas, Oklahoma, Louisiana, and Texas. Class and commodity rates, 518.
- Southeastern points from Cairo, Ill., and Ohio River crossings. Fresh meats and dressed poultry, 610.
- Southeastern points to and from Nashville, Tenn. Class rates, 308.
- Southeastern territory to and from eastern and interior eastern points. Minimum charge on l. c. l. shipments, 727.
- Southern classification territory. Sulphuric acid and chloride of zinc; return transportation of unloaded portions, 482.
- Southern states to Louisville, Ky., and Memphis, Tenn., transited and shipped to various points. Lumber and forest products, 182.
- South Omaha, Nebr., to Duluth, Minn., Superior, Wis., and other points. Grain and flour, 307.
- South Tacoma, Wash., to and from Washington, Idaho, North Dakota, South Dakota, Iowa, Wisconsin, and Minnesota. Switching charge, 128.
- Southwestern states to Louisville, Ky., and Memphis, Tenn., transited and re-shipped to various points. Lumber and forest products, 182.
- Spokane, Wash., from all points east of the Rocky Mountains. Class and commodity rates, 226.
- Spring Arbor, Mich., to Union City, Mich. Wet marl, 169.
- Springfield, Mo., from Belleville, Benton, Duquoin, Murphysboro, and other Illinois points, Quinimont, W. Va., and Lily, Pa. Bituminous coal, 206.
- Springfield, Mo., from Sault Ste. Marie and Fort Frances, Ontario, and Wisconsin, Minnesota, and Michigan. Newsprint paper, 709.
- Staples, Minn., from Mason City, Iowa. Cement, 618.
- Stiles, Wis., from Baltimore, Mich. Logs, 496.
- Stone Lake, Wis., from Cascade, Mont., stopped for grazing and reshipped to Chicago, Ill. Sheep, 109.
- Storey, Calif., from Rock Springs, Wyo. Range cattle, 671.
- Streator, Ill., from Bedford, Ind. Ground limestone, 51.
- Sulphur Mines, La., to Knoxville, Tenn., via Memphis, Tenn. Sulphur, 345.
- Sumner, Colo., to Eagle, Colo. Lumber and shingles, 49.

- Sunflower, Miss., to Dyersburg and Trimble, Tenn. Hardwood logs, 355 (357).
 Superior, Wis., from Omaha, South Omaha, and Nebraska City, Nebr., and Council Bluffs, Iowa. Grain and flour, 307.
 Swan River, Minn., from Mason City, Iowa. Cement, 613.
 Syracuse, N. Y., from Minnesota and Wisconsin. Potatoes, 680.
 Tallahassee, Fla., from Louisville, Ky., and Cincinnati, Ohio. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
 Tampa, Fla., from Jacksonville and Florida Transfer, Fla., originating in western territory. Fresh meats, dressed poultry, and salted meats, 461.
 Tempe, Ariz., to Massachusetts, Connecticut, Rhode Island, and Pennsylvania. Cotton, 467.
 Tennessee, from Autaugaville, Ala. Pine lumber, 563.
 Tennessee from Cincinnati, St. Bernard, and Ivorydale, Ohio, Port Ivory N. Y., Weehawken and Jersey City, N. J., St. Louis and Kansas City, Mo., Kansas City, Kans., Louisville, Ky., and Chicago, Ill. Soaps, washing, cleansing, and soap powders, and scouring compounds, 700.
 Tennessee from Detroit, Mich. Salt, 669.
 Tennessee to Florida. Fresh meats, dressed poultry, and salted meats, 461.
 Tennessee from Kentucky mines. Coal, 80.
 Tennessee from Knoxville, Miss. Yellow-pine lumber, timber, and lumber products, 485.
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- Virginia from Rupert, Idaho. Alfalfa meal, 475.
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ABANDONMENT.

Respondent sought to justify increased rates upon claim that it is operating at a loss and that if proposed increases are not permitted it will be compelled to discontinue operation because it can not further increase its existing deficit. *Held*: Increases found not justified. Rates between Ohio River and Columbia River Points, 10.

ABSORPTION. *See also* SWITCHING.

Carriers propose to restrict absorptions of switching charges of the Fort Worth Belt Ry., to specific amounts which are less than the present switching charges from or to industries and public stockyards at Fort Worth, Tex. *Held*: Line-haul carriers absorb full amount of switching charges to and from competing markets which are on a rate parity with Fort Worth, and as that relationship would be disrupted, proposed increased charges found not justified. Absorption of Switching Charges at Fort Worth, 73.

Following *Absorption of Switching Charges at Fort Worth*, 61 I. C. C., 73, increased through charges on interstate shipments to and from industries on the Fort Worth Belt Ry., at Fort Worth, Tex., under schedules which limited the amount of switching charges absorbed by certain carriers, found not justified, and during such periods when the full amounts of the switching charges were not absorbed found unreasonable to extent they exceeded the line-haul rates. Proceeding held open on issue of reparation. *Swift & Co. v. Ft. W. & D. C. Ry. Co.*, 77.

Based upon cost of performing the service, proposed increased charges for loading and unloading ordinary live stock at public stockyards at Chicago, Ill., and other western points, and absorptions of such charges by carriers engaged in the transportation, found justified. *Live Stock Loading and Unloading Charges*, 223.

Practice of trunk lines in absorbing a portion of the charges of a short line, found not to be a common carrier subject to the act, should be discontinued, but it is not unlawful to make a reasonable allowance to such short line for performing a portion of the service included in line-haul rates which trunk lines do not elect to do for themselves. *National Tube Co. v. P., C. & St. L. R. R. Co.*, 590 (599).

Proposed limitation on the amount of switching charges of the M. & St. L. R. R., and the Railway Transfer Co., that will be absorbed by the C., St. P., M. & O. and M., St. P. & S. S. M. railways, and which will result in increases in the charges assessed for line-haul movements against certain shippers and receivers of freight, found not justified. *Switching and Absorption at Minneapolis*, 646.

ACTIONS. *See* PENDING COMPLAINTS.

ADDITIONAL CHARGE.

The Fort Worth Belt Ry. found to be a switching agency employed by line-haul carriers in completion of contracts between carriers and shippers, and its charges should be a part of the freight charge made to the shipper and not in addition thereto. Absorption of Switching Charges at Fort Worth, 73 (76).

ADJACENT FOREIGN COUNTRY. *See also* CANADA.

Under section 1 of the act the Commission's jurisdiction over rates from an adjacent foreign country to points within the United States is limited to that portion of the haul which takes place within the United States. Lake Superior Paper Co. (Ltd.) v. Director General, 709 (718).

ADJUSTMENT OF RATES. *See also* RELATIONSHIP OF RATES; RELATIVE ADJUSTMENT.

Following *Birdsboro Case*, 49 I. C. C., 681, distance scale of rates was prescribed from Birdsboro, Pa., on crushed rock, but shipments do not originate at that point. Commission's order omitted Mopocacy, Pa., at which point shipments do originate, and carriers after considerable delay established from Monocacy the distance scale prescribed from Birdsboro. *Held*: Rates charged on shipments moving during interim found unreasonable and reparation awarded. Birdsboro Stone Co. v. P. R. R. Co., 46.

A readjustment of rates initiated by the Director General under general order No. 28, resulting in reductions, is not an admission of the reasonableness of the lower rates nor a confession that he regarded the higher rates originally established under that order, as unreasonable. Schram Glass Mfg. Co. v. Director General, as Agent, 435 (437).

Proposal to substitute increase of 35 per cent to factors west of St. Louis, Mo., instead of 33½ per cent as authorized in *Increased Rates, 1920*, 58 I. C. C., 220, in joint class and commodity rates between points in the southwest and points in defined territories east of Indiana-Illinois state line and of the Mississippi River, Cairo, Ill., and south, found not justified, as they would result in widening the rate spread between the base point and such other points in defined territories. Substitution for Increases in Rates, 518 (520).

Increases proposed in joint class and commodity rates between points in the southwest and points in defined territories east of the Indiana-Illinois state line, and the Mississippi River, Cairo, Ill., and south, originally established, and, prior to decision in *Increased Rates, 1920*, 58 I. C. C., 220, maintained, or intended to be, on basis of lowest combination of local rates to and from the Mississippi River crossings, or other basing points, found justified. *Id.* (522).

Proposal to increase rates on cane and logging cars, in straight or mixed carloads, from points in Texas to points in Mississippi, by substitution of increase of 35 per cent instead of 33½ per cent, the basis in effect to St. Louis, Mo., found justified. *Id.* (522-523).

Proposal to increase joint rates on wrought and cast iron pipe from iron-pipe producing points in the southeast to points in Oklahoma, which will correct certain fourth-section departures, as well as restore the former relationship between the Texas and Oklahoma points, found justified. *Id.* (523).

ADJUSTMENT OF RATES—Continued.

Proposal to increase joint rates on hides from Fort Worth, Tex., and Oklahoma City, Okla., to eastern tanning points, found justified as to Fort Worth, but not justified as to Oklahoma City, as proposed rates would result in undue prejudice to shippers from that point, except to points in the southeast, where Fort Worth should be allowed its natural advantages of location. *Id.* (525).

The Commission's sanction of a general adjustment of rates does not carry with it the approval of any particular rate under that adjustment. *Globe Soap Co.*, 40 I. C. C., 121. *Steel & Tube Co. v. Director General*, as Agent, 526 (529).

Substitution by the Director General of a flat increase of 4.5 cents on petroleum and products, in lieu of 25 per cent increase, as authorized under general order No. 28, not found unreasonable or unduly prejudicial, as such readjustment was made in an effort to minimize serious disturbances of rate relationships and met with the approval of producers, refiners, and jobbers generally. *Barnett Oil & Gas Co. v. Director General*, as Agent, 568.

Proposal to increase rates from El Paso, Tex., to north Pacific coast points by making effective increases of 33½ per cent as authorized under *Increased Rates*, 1920, 58 I. C. C., 220, in lieu of 25 per cent increase made effective under that decision, found not justified, as El Paso encounters competition from points subject to increases of 25 per cent and the routes to north Pacific coast territory lie almost wholly within the mountain-Pacific group, as to which increases of but 25 per cent were approved. *Proposed Increased Rates from and to El Paso*, 689.

Proposed increased rates to El Paso, Tex., and related points from points in mountain-Pacific group found justified where such rates, prior to increases authorized in *Increased Rates*, 1920, 58 I. C. C., 220, were the same as from Denver and other Colorado common points, but found not justified where such rates were in excess of the rates from Denver and Colorado common points, except to obviate fourth section departures. *Id.* (691).

Relationship of rates on coal from mines in Kentucky in L. & N. group No. 1 to Jackson, Mich., and Toledo, Ohio, disrupted by application of increases under general order No. 28 and subsequently readjusted found not to have been unreasonable or discriminatory. *Dewey Fuel Co. v. Director General*, as Agent, 697.

Adjustment of rates following *Fourth Section Violations in the Southeast*, 80 I. C. C., 158, and 82 I. C. C., 61, under which any-quantity rates on soaps, washing, cleansing, and soap powders, and scouring compounds to destinations in southern territory from points north and west thereof were canceled and c. l. and l. c. l. commodity rates established in lieu thereof, as a whole, not found unreasonable. *Procter & Gamble Distributing Co. v. A. C. Ry.*, 700.

ADMINISTRATIVE RULINGS. See CONFERENCE RULINGS; RULES OF PRACTICE; TARIFF CIRCULAR.

ADVANCE IN RATES. See also DOUBLE INCREASE.

In General:

Divisions in the form of absorptions can not be predicated solely upon the amount of revenue necessary to insure successful operation, and it is improper to attempt forcible adjustment of divisions between carriers by increasing the through rates which shippers must pay. Absorption of Switching Charges at Fort Worth, 73 (75-76).

61 I. C. C.

ADVANCE IN RATES—Continued.

In General—Continued.

Financial condition of a carrier, although an important matter for consideration, does not in itself warrant an increase in rates. Coal from Cumberland R. R. to Southeastern Points, 80 (82).

In connection with proposed increases in rates or charges carriers should be prepared to sustain the burden of justification which the law has placed upon them. Interchange Switching at Wichita, 205 (207).

The reasonableness of increases actually applied by the railroads to combination rates can not be determined entirely by a construction of general order No. 28, but "the controlling question is whether the resulting rates were unreasonable or otherwise unlawful." *Abbott v. Director General as Agent*, 296 (299).

Exigencies of tariff publication are not sufficient justification for increased rates. Substitution for Increases in Rates, 518 (520).

The Commission's sanction of a general adjustment of rates does not carry with it the approval of any particular rate under that adjustment. *Globe Soap Co.*, 40 I. C. C., 121. *Steel & Tube Co. v. Director General as Agent*, 526 (529).

A rate increase uniform in amount necessarily tends to preserve rather than disrupt preexisting relationships. This is not true of a percentage increase. *Barnett Oil & Gas Co. v. Director General as Agent*, 568 (570).

Comparisons of percentages which a uniform specific increase bears to preexisting rates are without great weight since any increase must result in higher percentage increases on short-haul than on long-haul traffic, and when reasonable for an average haul will yield more revenue for a short haul and less for a long haul. If that fact alone will suffice to condemn it, no uniform specific increase can ever be justified. *Id.* (570).

Proposal to increase rates from El Paso, Tex., to north Pacific coast points by making effective increases of 33½ per cent, as authorized under *Increased Rates, 1920*, 58 I. C. C. 220, in lieu of 25 per cent increase made effective under that decision, found not justified, as El Paso encounters competition from points subject to increases of 25 per cent and the routes to north Pacific coast territory lie almost wholly within the mountain-Pacific group, as to which increases of but 25 per cent were approved. *Proposed Increased Rates from and to El Paso*, 669.

Proposed increase rates to El Paso, Tex., and related points from points in mountain-Pacific group found justified where such rates prior to increases authorized in *Increased Rates, 1920*, 58 I. C. C. 220, were the same as from Denver and other Colorado common points, but found not justified where such rates were in excess of the rates from Denver and Colorado common points, except to obviate fourth section departures. *Id.* (691).

Arbitrariness: Proposed increased arbitrary over Tacoma, Wash., on interstate c. l. traffic between South Tacoma, Wash., and points on the Great Northern, found not justified. Switching Charge to and from South Tacoma, 128.

ADVANCE IN RATES—Continued.

Cars, cane and logging: Proposal to increase rates on, in straight or mixed carloads, from points in Texas to points in Mississippi, by substitution of increase of 35 per cent instead of 33½ per cent, the basis in effect to St. Louis, Mo., found justified. Substitution for Increases in Rates, 518 (522-523).

Class and commodity rates:

Proposed increased interstate joint and proportional rail-and-water class and commodity rates between Ohio River crossings and related points and landings on the Cumberland River, via Burnside, Ky., found not justified. Respondent sought to justify increases upon claim that it is operating at a loss under present rates and that if proposed increases are not permitted it will be compelled to discontinue operation. Rates between Ohio River and Cumberland River Points, 10.

Proposal to substitute increase of 35 per cent to factors west of St. Louis, Mo., instead of 33½ per cent, as authorized in *Increased Rates*, 1920, 58 I. C. C., 220, in joint class and commodity rates between points in the southwest and points in defined territories east of Indiana-Illinois state line and of the Mississippi River, Cairo, Ill., and south, found not justified, as they would result in widening the rate spread between the base point and such other points in defined territories. Substitution for Increases in Rates, 518 (520).

Increases proposed in joint class and commodity rates between points in the southwest and points in defined territories east of the Indiana-Illinois state line, and the Mississippi River, Cairo, Ill., and south, originally established, and, prior to decision in *Increased Rates*, 1920, 58 I. C. C., 220 maintained, or intended to be, on basis of lowest combination of local rates to and from the Mississippi River crossings, or other basing points, found justified. *Id.* (522).

Class rates: Proposed changes in interstate class rates to and from Nashville, Tenn., and other southeastern points, filed to remove the undue prejudice found to exist in favor of Nashville in *Murfreesboro Board of Trade*, 55 I. C. C., 648, found justified in part only. Maximum basis of rates prescribed to remove such undue prejudice and to establish just and reasonable rates from and to other points covered by the suspended schedules. Rates to and from Nashville, 308.

Coal:

Proposed increase of 20 cents per net ton in the joint rates on, from mines on the Cumberland R. R., to points on the L. & N. and connections in Tennessee, Virginia, the Carolinas, Georgia, Florida, and Alabama, found not justified. Coal from Cumberland R. R. to Southeastern Points, 80.

Proposed cancellation of joint rates on, from certain mines in the Fulton-Peoria district of Illinois to destinations in Ohio and Michigan, leaving in effect higher combinations, found not justified where respondent relied upon a showing that its divisions were unsatisfactory. Coal from Illinois to Michigan, 195.

Relationship of rates on, from mines in Kentucky in L. & N. group No. 1 to Jackson, Mich., and Toledo, Ohio, disrupted by application of increases under general order No. 28 and subsequently readjusted, found not to have been unreasonable or unjustly discriminatory. Dewey Fuel Co. v. Director General, as Agent, 697.

ADVANCE IN RATES—Continued.

Fresh meats and dressed poultry: Proposed increase of 0.5 cent per 100 pounds in commodity rates on, from Cairo, Ill., and Ohio River crossings to destinations in the southeast for purpose of placing rates through those points on a parity with the rates through Memphis, Tenn., which relationship had existed for many years, found not justified. Fresh Meats and Dressed Poultry from Ohio River, 610.

Glass and glassware: Proposed increased and reduced rates on glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, in straight or mixed carloads, from certain points in Oklahoma and Texas to points in Arkansas and southeastern states, found not justified, as they contain many inconsistencies and would result in violations of sections 3 and 4 of the act. Glass and Glassware from Oklahoma and Texas, 733.

Grain: Reshipping rates on, from St. Louis, Mo., to points in Indiana and Kentucky, established following cancellation of reshipping rates on grain originating in Illinois or beyond the so-called 100-mile zone west of the Mississippi River, from St. Louis, to Louisville, Ky., Cincinnati, Ohio, and points taking same rates, approved in 59 I. C. C., 435, found not unreasonable, and former finding affirmed. Grain from St. Louis to Cincinnati and Louisville, 256.

Grain and flour: Proposed increased rates on, from Omaha, Nebr., and other points to Duluth, Minn., and other destinations, found not justified where the sole reason for the proposed increases was that respondents were no longer in accord as to divisions. Grain and Flour from Missouri River Points to Duluth, 307.

Handling charges: Proposed increased charges for handling freight over the piers at New Orleans, La., and points in the New Orleans district found justified in part. Handling Charges at Louisiana Ports, 379.

Hides: Proposal to increase joint rates on, from Fort Worth, Tex., and Oklahoma City, Okla., to eastern tanning points, found justified as to Fort Worth, but not justified as to Oklahoma City, as proposed rates would result in undue prejudice to shippers from that point, except to points in the southeast, where Fort Worth should be allowed its natural advantages of location. Substitution for Increases in Rates, 518 (525).

Joint rates: Under Commission's tariff regulations joint rates upon interstate traffic might be published as single amounts or by addition of arbitraries. Latter form of publication does not render rates any the less joint rates, and mere fact that arbitrary might have been increased under general order No. 28 at time of its promulgation does not necessarily now justify increases proposed by carriers, upon whom the burden of proof still lies. Switching Charge to and from South Tacoma, 128 (129).

Kale, lettuce, and spinach: Proposal of American Ry. Express Co. to increase estimated weights on, in bushel containers and in barrels, together with c. l. minimum weights on same, found not justified. Present weights have been in effect since the inception of the industry, rates have been made with relation thereto, and the practical and only effect of the proposed increases would be a substantial increase in transportation charges. Increased Weights on Kale, Lettuce, and Spinach, 536.

Less-than-carload traffic: Proposed increased joint minimum rates and charges on l. c. l. shipments and new individual and joint regulations and practices affecting such rates and charges found not justified where the matter was mainly a question of divisions and of the method of rate making. Minimum Charges on Less-than-Carload Shipments, 727.

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ADVANCE IN RATES—Continued.

Lithopone: Proposed cancellation of commodity rates on lithopone and certain other commodities, in mixed carloads, between St. Louis, Mo., Peoria and Chicago, Ill., and Mississippi River crossings, on the one hand, and Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak., on the other, leaving in effect fifth-class rates, found justified, as the proposed cancellation will not increase the rates or minimum weights on such mixed carload shipments. Lithopone and Zinc Oxide between Western Points, 208.

Lithopone and zinc oxide: Proposed cancellation of commodity rates on, in mixed carloads, from Mineral Point, Wis., to St. Paul and Minneapolis, Minn., and Kansas City, Mo., leaving in effect higher fifth-class rates, found not justified, as no reason appears why the mixed carload commodity rate should be continued to St. Louis, Mo., and not to Kansas City. Lithopone and Zinc Oxide between Western Points, 208.

Loading and unloading: Based upon cost of performing the service, proposed increased charges for loading and unloading ordinary live stock at public stockyards at Chicago, Ill., and other western points, and absorptions of such charges by carriers engaged in the transportation, found justified. Live Stock Loading and Unloading Charges, 228.

Logs: Proposed increased rates on, from Baltimore, Mich., to Stiles and Oconto, Wis., when for manufacture and reshipment over the lines of the delivering carrier, found unreasonably high. Reasonable increase suggested. Logs from Baltimore, Mich., 496.

Meats, fresh and salted: Proposed cancellation of proportional commodity rates on fresh meats from Jacksonville and Florida Transfer, Fla., to Tampa and other points in Florida, applicable on shipments originating in western territory, and application of higher proportional class rates, found not justified, but increase in such proportional commodity rate and proposed increased rates on salted meats, found justified. Fresh and Salted Meats between Points in Florida, 461.

Petroleum and products: Substitution by the Director General of a flat increase of 4.5 cents on petroleum and products, in lieu of 25 per cent increase, as authorized under general order No. 28, not found unreasonable or unduly prejudicial, as such readjustment was made in an effort to minimize serious disturbances of rate relationships and met with the approval of producers, refiners, and jobbers generally. Barnett Oil & Gas Co. v. Director General, as Agent, 568.

Pipe, wrought and cast iron: Proposal to increase joint rates on, from iron-pipe producing points in the southeast to points in Oklahoma, which will correct certain fourth section departures, as well as restore the former relationship between the Texas and Oklahoma points, found justified. Substitution for Increases in Rates, 518 (523).

Poles, pipes, and connections, iron: Proposed increased proportional rates on iron or steel pipe, on iron or steel telegraph, telephone, and electric-railway poles, and on pipe connections, couplings, and fittings, east-bank upper Mississippi River crossings to interior Iowa points, found not justified. Iron Poles, Pipes, and Connections, 530.

Posts, cedar fence: Proposed increased rates on, from points in Oregon to points in California, which will place them on a level with the rates on cedar lumber, found not justified. Regrouping and Description of Lumber Articles from Pacific Coast Points, 397.

ADVANCE IN RATES—Continued.

Soda products: Proposed increased rates on, from Saltville, Va., to points in c. f. a. territory, which will place them on a level, distance considered, with the rates from Alkali, Ohio, a competing point, found justified. Soda Products from Saltville, Va., 559.

Special service: Services of a special character are not subject to the increases authorized under *Increased Rates, 1920*, 58 I. C. C., 220. National Box Co. v. M. P. R. R. Co., 211 (213).

Spelter: Rates on, from Peru and La Salle, Ill., to eastern trunk line and New England territories, increased on June 25, 1918, under general order No. 28, resulting in increases in excess of 25 per cent, the maximum authorized under that order, found not unreasonable or unduly prejudicial with reation to the corresponding rates from competing western points. Illinois Zinc Co. v. Director General, as Agent, 92 (105).

Switching:

Carriers propose to restrict absorptions of switching charges of the Fort Worth Belt Ry. to specific amounts which are less than the present switching charges from or to industries and public stock-yards at Fort Worth, Tex. *Held*: Line-haul carriers absorb full amount of switching charges to and from competing markets which are on a rate parity with Fort Worth, and as that relationship would be disrupted, proposed increased charges found not justified. Absorption of Switching Charges at Fort Worth, 73.

Following *Absorption of Switching Charges at Fort Worth*, 61 I. C. C., 78, increased through charges on interstate shipments to and from industries on the Fort Worth Belt Ry., at Fort Worth, Tex., under schedules which limited the amount of switching charges absorbed by certain carriers, found not justified, and during such periods when the full amounts of the switching charges were not absorbed found unreasonable to extent they exceeded the line-haul rates. Proceeding held open on issue of reparation. Swift & Co. v. Ft. W. & D. C. Ry. Co., 77.

Increased charges proposed by the St. L.-S. F. Ry. Co., for switching between industries on its line and interchange points with other carriers at Wichita, Kans., in connection with a line-haul movement by the latter, found not justified. Interchange Switching at Wichita, 205.

Proposal of the Minneapolis & St. Louis R. R. to increase its charge for switching between industries on its line at Mason City, Iowa, and the interchange tracks of connecting lines, found not justified. Switching Charges at Mason City, Iowa, 479.

Proposed cancellation by the C., C. C. & St. L. Ry. Co. of its switching charges between its incline or river track and connecting lines' tracks at Cairo, Ill., and from its track barge to connecting lines' tracks at the same place, thereby making applicable class distance rates which are higher, found not justified. Switching between Incline Tracks and Connections at Cairo, 535.

Proposed increased charges of the M. & St. L. R. R. and Railway Transfer Co. for switching interstate shipments at Minneapolis. St. Louis Park, and Hopkins, Minn., found not justified, but inadequacy of present revenues clearly demonstrated by cost figures submitted, and reasonable and just charges prescribed. Switching and Absorption at Minneapolis, 646.

ADVANCE IN RATES—Continued.**Switching—Continued.**

Proposal of the B. & O. R. R. to establish a charge of \$5 cents per net ton in lieu of its present charge of \$3 per car for switching coal and coke from its points of interchange with the Chesapeake Western at Harrisonburg, Va., to industries on its line and to its connection with the Southern at that point, found not justified. Switching Coal and Coke at Harrisonburg, 667.

Wood, fuel and pulp: Proposed increased rates on fuel wood, pulp wood, and wood bolts between points in Idaho, Oregon, and Washington, found not justified, as their approval would not bring about a uniform and non-prejudicial basis for general application throughout those states. Reasonable and nonprejudicial distance scale prescribed. Wood Rates between North Pacific Coast Points, 159.

ADVANTAGES AND DISADVANTAGES. See LOCATION.**AFFIDAVIT.**

Complainant, in complying with Rule V of the Commission's Rules of Practice, authorized to submit an affidavit to effect that it paid and bore the freight charges, with understanding that if defendants object further hearing may be requested regarding subject of reparation. Illinois Zinc Co. v. Director General, as Agent, 92 (102).

AGENT.

Assessing demurrage under three separate average agreements at complainant's plant, served by a terminal company who acts as agent of the trunk lines, found not unreasonable or unlawful, as the situation was the same as if the rails of the three carriers separately reached the plant, and each was within its rights in applying its separately established demurrage rules in connection with the traffic which it handled. Penick & Ford (Ltd.) v. Director General, 178.

A carrier has a right to perform any transportation service that is required of it, but it may elect to hire the industry or some one else to perform that duty. Edge Moor Iron Co. v. Director General, as Agent, 587 (539).

AGGREGATE OF INTERMEDIATES. See THROUGH AND LOCAL.**AGREEMENT. See AVERAGE AGREEMENT; CONTRACTS.****ALLOCATION OF COSTS.**

In making a general separation of the expenses chargeable to interchange and interior plant switching the engine hour will usually be found a safer guide than number of cars handled. Illinois Northern Ry., 629 (633-634).

ALLOWANCES.

Cancellation by trunk line, following *Industrial Railways Case*, 29 I. C. C., 212, of allowance formerly paid complainant or its plant facility, the Culver & Port Clinton R. R., for switching cars from its plant at Culver, Ohio, while performing a similar service for competitors without charge, found not unreasonable or unduly prejudicial, as it has not been possible for trunk line to perform the service and circumstances and conditions at complainant's plant are different from those obtaining at plants of competitors. United States Gypsum Co. v. C. & P. C. R. R. Co., 117.

Contention that unreasonable charges resulted because allowance made complainant for furnishing ice and salt on l. c. l. shipments of dressed poultry, butter, eggs, and cheese was less than defendant's charge for furnishing the same, *Held*: Not sustained, as no evidence of record that through charges, less allowance for ice and salt furnished, were unjust or unreasonable for service performed by defendant. Swift & Co. v. Director General, as Agent, 183.

ALLOWANCES—Continued.

Defendant's refusal to make allowance to complainant for spotting cars at Harriman shipyard, near Bristol, Pa., while making allowances to other industries in the same rate district, found not unreasonable, discriminatory, or unduly prejudicial, as such industries are not in competition with complainant, and circumstances and conditions at the respective plants are dissimilar. *Merchant Shipbuilding Corp. v. P. R. R. Co.*, 214. No legal obligation rests upon carriers to perform switching and spotting service solely at a shipper's convenience, and a shipper is not entitled to an allowance for a service which the carrier is ready and willing to perform and which the shipper performs because it is not convenient for it to permit the carrier to do so. *Id.* (217).

Though there may be no affirmative obligation upon carriers to perform spotting services under line-haul rates, they may not practice unjust discrimination or undue prejudice by making allowances to competitive shippers at whose plants substantially similar circumstances and conditions are shown to exist. *Id.* (217-218).

Failure of carriers to equip refrigerator cars with temporary false floors for transportation of potatoes, under carriers' protective service against freezing, and refusal to pay shipper an allowance to reimburse them for cost of supplying the same, found not in violation of the act to regulate commerce or the federal control act. Any redress to which shipper may be entitled found to rest with the courts. *Rutherford-Brede Co. v. Director General as Agent*, 515.

The Commission's power under section 15 of the act is to fix the maximum to be paid as an allowance, and in the exercise of this power it may not require a carrier to make an allowance or fix the precise amount; and it is doubtful whether damages can be awarded for failure to pay except in cases where the allowance is published in the carrier's tariffs and is not more than reasonable for the service. *Id.* (517).

Failure of defendant to perform spotting service at complainant's plant at Edge Moor, Del., or to make an allowance to complainant for performing such service with its own power, while making allowance for similar service at a plant adjacent to that of complainant, with whom no competition exists, not found to result in unreasonable, discriminatory, or unduly prejudicial rates. Complainant never requested defendant to perform the service, and merely sought an allowance rather than have defendant perform it. *Edge Moor Iron Co. v. Director General, as Agent*, 537.

Practice of trunk lines in absorbing a portion of the charges of a short line, found not to be a common carrier subject to the act, should be discontinued; but it is not unlawful to make a reasonable allowance to such short line for performing a portion of the service included in line-haul rates which trunk lines do not elect to do for themselves. *National Tube Co. v. P., C., C. & St. L. R. R. Co.*, 590 (599).

ALTERNATIVE.

The assessment of average demurrage is a concession from the straight demurrage charge and is a privilege or option extended on the part of the carrier. *Penick & Ford (Ltd.) v. Director General*, 175 (177).

A carrier has a right to perform any transportation service that is required of it, but it may elect to hire the industry or some one else to perform that duty. *Edge Moor Iron Co. v. Director General, as Agent*, 537 (539).

AMENDMENT OF COMPLAINT.

At the hearing complainant sought to amend complaint to include destinations not named in original complaint and to make an additional carrier defendant. *Held*: Amendment refused. *Barber Co. v. Director General, as Agent*, 23 (24).

ANALOGOUS ARTICLES. *See* COMPARATIVE RATES.**ANY-QUANTITY RATES.** *See also* LESS-THAN-CARLOADS.

First-class any-quantity rates on hair and wool press cloth from certain north Atlantic ports and related points to points in Texas and the southeast; from Houston, Tex., to points in the southeast; and between points in the southeast not found unreasonable or unduly prejudicial when applied to l. c. l. shipments, or as compared with lower rating on cotton press cloth, but found unreasonable when applied to c. l. shipments. Reasonable maximum c. l. rates prescribed. *Interstate Cotton Seed Crushers' Assn. v. Director General*, 1.

Adjustment of rates following *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 32 I. C. C., 61, under which any-quantity rates on soaps, washing, cleansing, and soap powders, and scouring compounds to destinations in southern territory from points north and west thereof were canceled and c. l. and l. c. l. commodity rates established in lieu thereof, as a whole, not found unreasonable. *Procter & Gamble Distributing Co. v. A. C. Ry.*, 700.

APPLICATION.

Section 15: Seeking authority to cancel certain rates not passed upon, as the law does not now require that such authority be secured from the Commission. *Interstate Cotton Seed Crushers' Assn. v. Director General*, 1 (2).

ARBITRARIES. *See also* DIFFERENTIAL.

Proposed increased arbitrary over Tacoma, Wash., on interstate c. l. traffic, between South Tacoma, Wash., and points on the Great Northern, found not justified. Switching Charges to and from South Tacoma, 123.

Under Commission's tariff regulations joint rates upon interstate traffic might be published as single amounts or by addition of arbitraries. Latter form of publication does not render rates any the less joint rates, and mere fact that arbitrary might have been increased under general order No. 28 at time of its promulgation does not necessarily now justify increases proposed by carriers, upon whom the burden of proof still lies. *Id.* (129).

Rates on yellow-pine lumber, timber, and lumber products from Knoxville, Miss., a local point on the Fernwood, Columbia & Gulf R. R., to points in Tennessee, which were made by combination of local rates to and beyond Fernwood, Miss., found unreasonable to extent they exceeded rates from Fernwood by more than 2.5 cents. Reparation denied. *Swift Lumber Co. v. F. & G. R. R. Co.*, 435 (491).

The general, although not universal, practice throughout the southeast appears to be to make rates from local points on independent short lines by adding an arbitrary to the rate from the junction point. *Id.* (487).

AVERAGE AGREEMENT. *See also* DEMURRAGE.

Assessing demurrage under three separate average agreements at complainant's plant, served by a terminal company who acts as agent of the trunk lines, found not unreasonable or unlawful, as the situation was the same as if the rails of the three carriers separately reached the plant, and each was within its rights in applying its separately established demurrage rules in connection with the traffic which it handled. *Penick & Ford (Ltd.) v. Director General*, 173.

AVERAGE AGREEMENT—Continued.

Demurrage charges constitute a portion of the earnings of carriers, and it may well be that a contract or agreement under which credits earned at a particular point or industry on the traffic of one carrier might be used to offset debits incurred in connection with traffic of another, is within the spirit of the inhibition of the antipooling provision of section 5 of the act. *Id.* (176).

It was within the discretionary power of the Director General to treat the railroads as a unit or as separate lines, and while he might have provided for assessment of demurrage under a single average agreement at complainant's plant, on traffic handled by three different lines, he did not do so, and nothing in the federal control act required that he should do so. *Id.* (177).

The assessment of average demurrage is a concession from the straight demurrage charge and is a privilege or option extended on the part of the carrier. *Id.* (177).

Object of, is to permit the handling of cars without regard to order of arrival. *Union Bag & Paper Corp. v. Director General*, as Agent, 424 (481).

Where cars are constructively placed at points short of billed destination, consignees operating under average agreements should be allowed credit for the time necessary to transport the cars from the point of constructive placement to point of final placement. *Id.* (427).

AVERAGE LOADING. See LOADING.**BACK HAUL.**

Proposed tariff rule governing reconsignment or diversion before and after placement, where back haul or out of line movements involved, found not justified in so far as it fails to provide for the exception covering shipments placed on public delivery tracks. *Diversions and Reconsignment Rules*, 885 (888-889).

BAGGAGE.

Upon further hearing, original report 60 I. C. C., 61, intrastate excess baggage charges, in the state of Montana, of the Butte, Anaconda & Pacific Ry. Co., an electric line, lower than the corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Montana Rates and Fares*, 500.

Excess baggage charges required by state authority to be maintained within the state, lower than the corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *North Dakota Rates, Fares, and Charges*, 504; *Arizona Rates, Fares, and Charges*, 572.

BELT LINE.

Fort Worth Belt Ry. Co. described. Absorption of Switching Charges at Fort Worth, 73 (74).

The Fort Worth Belt Ry. found to be a switching agency employed by the line-haul carriers in completion of contracts between carriers and shippers, and its charges should be a part of the freight charge made to the shipper and not in addition thereto. *Id.* (76).

BENWOOD & WHEELING CONNECTING RAILWAY.

History and description of. *National Tube Co. v. P., C. & St. L. R. R. Co.*, 590 (591).

Found to be a common carrier, subject to the act *Id.* (599).

BLANKET RATES. See also GROUP RATES.

Rates on yellow-pine lumber, timber, and lumber products from Knoxo, Miss., a local point on the Fernwood, Columbia & Gulf R. R., found not unreasonable, but unduly prejudicial to extent they exceeded and exceed the blanket basis of rates applicable from the junction of that carrier with the Illinois Central R. R. Reparation denied. *Swift Lumber Co. v. F. & G. R. R. Co.*, 485.

BOTH DIRECTIONS.

Fact that rate in one direction is lower than on like traffic in the opposite direction is not conclusive of the unreasonableness of the higher rate. *Interstate Cotton Seed Crushers' Assn. v. Director General*, 1 (7).

Rate applicable on second-hand boiler flues and tubes, billed as scrap iron, from Port Arthur, Tex., to St. Louis, Mo., found unreasonable to extent it exceeded rate on wrought or cast iron or steel pipe, secondhand, and on new pipe and boiler flues or tubes in the reverse direction. Adjustment of undercharges directed. *Schwartz v. T. & N. O. R. R. Co.*, 29 (30).

Class rates on iron pipe and pipe fittings from Oklahoma points to points in Missouri, Illinois, Kansas, and Texas found unreasonable and unduly prejudicial as compared with lower commodity rates in the reverse directions for comparable distances. Reasonable rates prescribed and reparation awarded. *United Iron Works Co. v. Director General*, as Agent, 33 (41-42).

Rate legally applicable on ice from Jacksonville, Fla., to Atlanta, Ga., found not unreasonable as compared with lower rate in the opposite direction or as compared with lower rate temporarily established after shipments moved to meet an ice shortage at Atlanta. *Atlantic Ice & Coal Corp. v. S. Ry. Co.*, 111.

Class rates on oil-well outfits and supplies from Burkburnett, Tex., to Mansfield and Gahagan, La., and on wrought-iron pipe from Wichita Falls, Tex., to Gahagan, found unseasonable to extent they exceeded commodity rates from New Orleans, La., and points in New Orleans territory, including Mansfield and Gahagan, to Burkburnett and Wichita Falls. Reasonable rates prescribed and reparation awarded. *Goodman Drilling Co. v. Director General*, as Agent, 164.

Where transportation conditions affecting movements in opposite directions between the same points are substantially similar, there should be no material disparity in the rates. Rates to and from Nashville, 308 (334).

BUNKERS.

Average loading capacity of bunkers of Fruit Growers' Express cars as a whole found not in excess of 9,200 pounds per car, and under methods of loading prevailing in southern territory average amount of ice used in full-tank loading of empty bunkers found to be substantially less and does not exceed 8,500 pounds. *Railroad Commissioners of Florida v. Director General*, 438 (451).

BURDEN OF PROOF.

Where carrier failed to increase rates under general order No. 28 at time of its promulgation, and after termination of Federal control attempted to increase such rates, which were suspended by the Commission, the burden of proof is upon the carrier. *Switching Charge to and from South Tacoma*, 128 (129).

BURDEN OF PROOF—Continued.

In connection with proposed increases in rates or charges carriers should be prepared to sustain the burden of justification which the law has placed upon them. Interchange Switching at Wichita, 205 (207).

CANADA.

Relationship of rates on newsprint paper from Sault Ste. Marie and Fort Frances, Ontario, to destinations in the west and southwest found unduly prejudicial to those points and unduly preferential of competing manufacturing points in Minnesota and Wisconsin to extent the rates from points found prejudiced exceed the rates from the preferred points by more than the differentials herein prescribed. Lake Superior Paper Co. (Ltd.) v. Director General, 709.

CAR DISTRIBUTION.

Practice of defendant in the distribution of cars for grain loading, in according complainant's competitors at Roosevelt, Mountain Park, and Snyder, Okla., a larger proportion of cars than was furnished complainants at Cold Springs, Okla., found to have resulted in undue prejudice. Record held open on question of damages. Hobart Mill & Elevator Co. v. Director General, 192.

CAR RENTAL. See RENTAL.**CAR SERVICE.**

Principles announced in *Owasco River Ry. Case*, 53 I. C. C., 104, governing rules for car interchange arrangements between industrial common carriers and trunk line connections, and basis of settlement for accrued charges, overruled in part. Birmingham Southern R. R. Co. v. Director General, as Agent, 551 (556).

Carriers must observe reasonable rules and practices with respect to car service as defined in the act; however, car interchange is primarily a matter of agreement. The common-carrier status of a road gives no inherent right to per diem or reclaim. Id. (556).

CAR SHORTAGE.

Minimum applicable on steel turnings moving in open-top cars at a time when such equipment was being utilized to fullest extent for transportation of coal to fill a national emergency found not unreasonable. Complainant refused to accept box cars and did not in all instances load to level full, while other shippers exceeded the minimum by building up the sides of such open cars. Briggs & Turivas v. Director General, as Agent, 363 (364).

CAR SPOTTING. See SPOTTING CARS.**CARLOAD AND LESS-THAN-CARLOAD.**

First-class any-quantity rates on hair and wool press cloth from north Atlantic ports and related points to points in Texas and the southeast; from Houston, Tex., to points in the southeast; and between points in the southeast not found unreasonable or unduly prejudicial when applied to l. c. l. shipments, or as compared with lower rating on cotton press cloth, but found unreasonable when applied to c. l. shipments. Reasonable maximum c. l. rates prescribed. Interstate Cotton Seed Crushers' Assn. v. Director General, 1.

CARLOAD RATES.

Volume of movement is not determinative of the right to a c. l. rating. Nor must it be shown that increased movement in c. l. quantities would result from its establishment. Interstate Cotton Seed Crushers' Assn. v. Director General, 1 (6).

CARLOAD TRAFFIC.

The movement of traffic in carloads results in economy of transportation facilities, and is therefore greatly to be desired in the interests of the public as well as of the carriers. *Interstate Cotton Seed Crushers' Assn. v. Director General*, as Agent, 1 (6).

CIRCUITOUS ROUTES.

Carriers having indirect routes authorized to maintain the same rates as via the direct lines and to maintain higher rates at intermediate points, provided they do not exceed rates for equal distances to or from competitive points via the direct lines. *South Bend Chamber of Commerce v. Director General*, 67 (72).

It is the Commission's practice in according fourth section relief to circuitous lines to confine it to those the length of which exceeds that of the direct lines by 15 per cent or more. *Proctor & Gamble Distributing Co. v. A. C. Ry.*, 700 (706).

CLAIMS. See LOSS AND DAMAGE.**CLASS AND COMMODITY RATES. See also CLASS RATES.**

Proposed increased interstate joint and proportional rail-and-water class and commodity rates between Ohio River crossings and related points and landings on the Cumberland River, via Burnside, Ky., found not justified. Respondent sought to justify increases upon claim that it is operating at a loss under present rates and that if proposed increases are not permitted it will be compelled to discontinue operation. Rates between Ohio River and Cumberland River Points, 10.

Class rates on spent sulphuric or sludge acid in tank-car loads, moving during federal control from Arkansas City, Eldorado, Augusta, and Wichita, Kans., to Coffeyville, Kans., exceeded lower commodity rates subsequently established. Reparation awarded. *Sinclair Refining Co. v. Director General*, as Agent, 18.

Class rates on iron pipe and pipe fittings from Oklahoma points to points in Missouri, Illinois, Kansas, and Texas found unreasonable and unduly prejudicial as compared with lower commodity rates in the reverse directions for comparable distances. Reasonable rates prescribed and reparation awarded. *United Iron Works Co. v. Director General*, as Agent, 83 (41-42).

It can not be said that a commodity rate must bear a fixed relation to the corresponding class rate, even as between competing points. *Quinton Spelter Co. v. Ft. S. & S. R. R. Co.*, 43 (44).

Class rate legally applicable on asphaltum moving during federal control from Bayonne, Constable Hook, and Warners, N. J., to Jersey Avenue Station, Jersey City, N. J., found unreasonable as compared with lower commodity rates to other New Jersey points for similar distances. Reparation awarded on basis of commodity rate subsequently established. *National Asbestos Mfg. Co. v. Director General*, as Agent, 54.

In original report, 57 I. C. C., 215, the Commission prescribed reasonable basis for the removal of relatively unreasonable and unduly prejudicial class and commodity rates between South Bend, Mishawaka, Elkhart, Goshen, Nappanee, and Michigan City, Ind., and points in eastern trunk line and New England territories. Upon further hearing original report modified by eliminating Holland, Mich., from, and including Water-vliet, Mich., in, the 94 per cent group. Findings in all other respects affirmed. *South Bend Chamber of Commerce v. Director General*, 67.

CLASS AND COMMODITY RATES—Continued.

Commodity rates charged on packing-house products from Ottumwa, Iowa, to Memphis, Tenn., higher than the contemporaneous fifth-class rates from and to the same points, found not unreasonable. *Morrell & Co., v. C., B. & Q. R. R. Co.*, 153.

Class rates on oil-well outfits and supplies from Burkburnett, Tex., to Mansfield and Gahagan, La., and on wrought-iron pipe from Wichita Falls, Tex., to Gahagan, found unreasonable to extent they exceeded commodity rates from New Orleans, La., and points in New Orleans territory, including Mansfield and Gahagan, to Burkburnett and Wichita Falls. Reasonable rates prescribed and reparation awarded. *Goodman Drilling Co. v. Director General, as Agent*, 164.

Proposed cancellation of commodity rates on lithopone and zinc oxide, in mixed carloads, from Mineral Point, Wis., to St. Paul and Minneapolis, Minn., and Kansas City, Mo., leaving in effect higher fifth-class rates, found not justified, as no reason appears why the mixed-carload commodity rate should be continued to St. Louis, Mo., and not to Kansas City. Lithopone and Zinc Oxide between Western Points, 208.

Proposed cancellation of commodity rates on lithopone and certain other commodities, in mixed carloads, between St. Louis, Mo., Peoria and Chicago, Ill., and Mississippi River crossings, on the one hand, and Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak., on the other, leaving in effect fifth-class rates, found justified, as the proposed cancellation will not increase the rates or minimum weights on such mixed carload shipments. *Id.* (210).

Proposed cancellation of proportional commodity rate on fresh meats from Jacksonville and Florida Transfer, Fla., to Tampa and other points in Florida, applicable on shipments originating in western territory, and application of higher proportional class rates, found not justified, but increase in such proportional commodity rate and proposed increased rates on salted meats found justified. *Fresh and Salted Meats between Points in Florida*, 461.

Class rates on sulphuric acid, in tank-car loads, from Charlotte, N. C., to Greenville, S. C., and Selma, N. C., moving during federal control, exceeded lower commodity rates subsequently established. Reparation awarded. *Virginia-Carolina Chemical Co. v. Director General, as Agent*, 473.

Proposal to substitute increase of 35 per cent to factors west of St. Louis, Mo., instead of 33½ per cent, as authorized in *Increased Rates, 1920*, 58 I. C. C., 220, in joint class and commodity rates between points in the southwest and points in defined territories east of Indiana-Illinois state line and of the Mississippi River, Cairo, Ill., and south, found not justified, as they would result in widening the rate spread between the base point and such other points in defined territories. Substitution for *Increases in Rates*, 518 (520).

Increases proposed in joint class and commodity rates between points in the southwest and points in defined territories east of the Indiana-Illinois state line, and of the Mississippi River, Cairo, Ill., and south, originally established, and, prior to decision in *Increased Rates, 1920*, 58 I. C. C., 220, maintained, or intended to be, on basis of lowest combination of local rates to and from the Mississippi River crossings, or other basing points, found justified. *Id.* (522).

61 I. C. C.

CLASS AND COMMODITY RATES—Continued.

Commodity rates on fresh fruits and vegetables, in mixed carloads, from Los Angeles and San Francisco, Calif., to Bisbee and Douglas, Ariz., exceeded class C rates contemporaneously in effect. Reasonable maximum rates prescribed and reparation awarded. *Buxton-Smith Co. v. Director General*, as Agent, 623.

Fifth-class rate on wooden truck barrels from Norfolk, Va., to Charleston, S. C., established in connection with the general readjustment following *Fourth Section Violations in the Southeast*, 30, I. C. C., 153, not found unreasonable as compared with commodity rates from and to various southern points for similar distances not similarly revised. *Ansaldo & Nicholes v. Director General*, as Agent, 664.

Sixth-class rate on coal-tar oil, in tank car loads, from Chattanooga, Tenn., to Solvay, N. Y., found unreasonable as compared with lower commodity rate from Birmingham, Ala., a farther distant point. Reparation awarded on basis of commodity rate subsequently established. *Chattanooga Coke & Gas Co. v. Director General*, as Agent, 729.

Proposed reductions in class and commodity rates applicable via water-and-rail and rail, water, and rail from Atlantic seaboard territory to Texas points, found not justified. *Rail-and-Water Rates from Atlantic Seaboard*, 740.

CLASS RATES. *See also* CLASS AND COMMODITY RATES.

To effectuate the relative adjustment of class rates prescribed in *Wisconsin Rate Cases*, 44 I. C. C., 602, from eastern points to La Crosse, Wis., on the one hand, and Dubuque, Iowa, St. Paul, Minn., and Chicago, Ill., on the other, disrupted by various increases permitted since that decision, present class rates to La Crosse found unreasonable and unduly prejudicial and reasonable and nonprejudicial rates prescribed. *La Crosse Chamber of Commerce v. A. A. R. R. Co.*, 289.

Proposed changes in interstate class rates to and from Nashville, Tenn., and other southeastern points, filed to remove the undue prejudice found to exist in favor of Nashville in *Murfreesboro Board of Trade*, 55 I. C. C., 648, found justified in part only. Maximum basis of rates prescribed to remove such undue prejudice and to establish just and reasonable rates from and to other points covered by the suspended schedules. Rates to and from Nashville, 308.

Third-class rate on boat rudders from Wheeling, W. Va., to Wilmington, N. C., found unreasonable as compared with rates between other points for similar distances. Reparation awarded on basis of fifth-class rate subsequently established. *Fuller Co. v. A. C. L. R. R. Co.*, 343.

Third-class any-quantity rate on copra, from Rolling Fork, Miss., to New Orleans, La., found not unduly prejudicial but unreasonable to extent it exceeded class-D rating on cotton seed, which lower rating was subsequently made applicable to copra. Reparation awarded. *Rolling Fork Oil Co. v. Director General*, as Agent, 627.

CLASSIFICATION TERRITORIES.

Rates in c. f. a. territory are usually lower than those in either western or southern classification territories. *Hirth-Krause Co. v. Director General*, as Agent, 350 (353).

COMBINATION RATES.

When distances are relatively great and transfer at rate-breaking points is not attended by unusual costs, the combination basis, using local rates, ordinarily is abnormal and unscientific and often discriminatory. *Intermediate Rate Assn. v. Director General*, 226 (246).

COMBINATION RATES—Continued.

The Commission has generally recognized that through rates should be less than the combinations, but prompted chiefly by considerations of paramount public interest, growing out of the revenue conditions of certain carriers, it has refrained from and even declined absolute condemnation of combinations. *Id.* (246).

Rates on salt cake from Newell, Pa., and Hegewisch and West Hammond, Ill., to International Falls, Minn., exceeded the combination rates to Duluth, Minn., and Barksdale, Wis., by more than 5.5 cents. Reparation awarded. *Minnesota & Ontario Paper Co. v. Director General as Agent*. 408.

On secondhand burlap bags from San Francisco, Calif., to Rupert, Idaho, based on Portland, Oreg., exceeded lower combination applicable via Portland and Huntington, Oreg. Reparation awarded. *Hawkins v. O. S. L. R. R. Co.*, 475.

COMMON CARRIERS.

The following short lines found to be common carriers subject to the act, and following *Birmingham Southern R. R. Co.*, 61 I. C. C., 551, arrangements between them and their trunk line connections, with respect to use and detention of foreign cars and basis for settlement of accrued charges, prescribed:

Benwood & Wheeling Connecting Ry. *National Tube Co. v. P., C., C. & St. L. R. R. Co.*, 590 (599-600).

Illinois Northern Ry., 629 (634-636).

McKeesport Connecting R. R. *National Tube Co. v. P., C., C. & St. L. R. R. Co.*, 590 (599-600).

Pullman R. R. Co., 637 (644-646).

Mercer Valley R. R. found not to be a common carrier subject to the act. *National Tube Co. v. P., C., C. & St. L. R. R. Co.*, 590 (598).

Where short line found not to be a common carrier subject to the act, its demurrage tariffs on file with the Commission are of no force and effect, and demurrage tariffs of trunk lines are applicable. *Id.* (598).

Wyandotte Southern Ry. Co. found to be a common carrier subject to the act which may lawfully participate in joint rates or have its charges on interstate shipments absorbed under proper tariff provision by roads having the line haul. *Wyandotte Southern Ry. Co.*, 756.

COMMUTATION FARES AND TICKETS.

One-way, round-trip, and commutation fares between stations on the W., B. & A. E. R. R. Co., an electric line, in Maryland and Washington, D. C., found not unreasonable or otherwise unlawful. *W. B. A. Commuters Club v. W., B. & A. E. R. R. Co.*, 802.

Proposal of the Pennsylvania and B. & O. railroad companies to discontinue the interchangeable use of 60-trip commutation tickets between Washington, D. C., and Baltimore, Md., which practice was initiated by the U. S. Railroad Administration during federal control and was occasioned by congestion of passenger travel between those points, found justified, as the service of each of the carriers is ample to take care of its traffic and there is no necessity for a continuation of the practice under present conditions. *Interchangeable Acceptance of Commutation Tickets*, 677.

Advantage of alternative service in case of emergency does not in itself warrant the Commission ordering a continuance of the practice of interchangeable use of commutation tickets. *Id.* (679).

COMPANY MATERIAL.

Allegation of inefficient management based upon fact that a close intercorporate relationship exists between two separately managed and operated carriers whose rails parallel each other and that company materials should be transported free or at reduced rates, *Held*: Following *Conference Ruling 225 (b)*, allegation not sustained. *Arizona Rates, Fares, and Charges*, 572 (582-588).

Report of the Commission in response to Senate Resolution relating to the increased cost of fuel to steam railroads of the United States for the year 1920 as compared with the cost for the year 1919. *Increased Cost of Railroad Fuel, 1920*, 761.

COMPARATIVE RATES.

In General: In comparing average rates on all commodities with a particular commodity the relative volume of low-grade traffic must always be allowed for. *Watson Co. v. Director General*, as Agent, 719 (723).

Cocoa butter: Rates on, found unreasonable to extent they exceeded rates on chocolate and chocolate coating. Measure of reasonable maximum rates prescribed and reparation awarded. *McDonald Chocolate Co. v. C. of G. Ry. Co.*, 113.

Copra: Third-class any-quantity rate on, exceeded class-D rating on cotton seed, which lower rating was subsequently made applicable to copra. Reparation awarded. *Rolling Fork Oil Co. v. Director General*, as Agent, 627.

Cotton: Rates applicable on, in gin-compressed bales, not subject to compression in transit, found unreasonable to extent they exceeded rates on uncompressed cotton. Reparation awarded. *Southwest Cotton Co. v. Director General*, as Agent, 467.

Flues and tubes, secondhand boiler: Rate applicable on, billed as scrap iron, found unreasonable to extent it exceeded rate on wrought or cast iron or steel pipe, secondhand, and on new pipe and boiler flues or tubes in the reverse direction. Adjustment of undercharges directed. *Schwartz v. T. & N. O. R. R. Co.*, 29 (30).

Linters, cotton: Contention that difference in values warranted a lower rate on cotton linters, uncompressed, than on cotton found not sustained as in *Louisiana Cotton*, 46 I. C. C., 451, 453, the Commission approved rates on linters the same as those on cotton. *Speir & McKay v. Director General*, as Agent, 736.

Molasses, blackstrap: Rates on, found not unreasonable or unduly prejudicial as compared with lower rates on other commodities where comparisons confined to value, carload minimum, and rate. *Norfolk Feed Milling Co. v. P. R. R. Co.*, 738 (739).

Oil, soya-bean and peanut, solidified: Rate on, in bags, found unreasonable as compared with rates on other commodities and with rates on solidified oils for similar distances. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 457 (458).

Spokes, club-turned: Following *Eastern Wheel Mfrs. Asso.*, 27 I. C. C., 370, and other cited cases, rates on, found unreasonable to extent they exceeded rates on lumber manufactured from the same kind of wood. Measure of reasonable maximum rates prescribed and reparation awarded. *Kelsey Wheel Co. v. Y. & M. V. R. R. Co.*, 88.

Steel turnings: Minimum applicable on, found not unreasonable as compared with minimum on scrap iron and steel. *Briggs & Turivas v. Director General*, as Agent, 363.

COMPETITION.

In General: Defined as "striving for something which another is actively seeking and wishing to gain." *U. S. v. U. P. R. R. Co.*, 228 U. S., 61, 87. *Intermediate Rate Asso. v. Director General*, 226 (235).

Articles: Contention of undue prejudice not sustained where there is no competitive relationship between the respective commodities. *Southern Hardwood Traffic Asso. v. Director General*, 132 (142); *American Creosoting Co. v. Director General*, 145 (151).

Market:

Contention that as defendants participate in the haul from Pittsburgh, Pa., to points in both Oklahoma and Texas, rates on iron pipe from Oklahoma to Texas should be on a low basis to permit movement in competition with shipments from eastern mills to Texas, not sustained. *United Iron Works Co. v. Director General, as Agent*, 33 (38).

Proposed reduced rates on salt from Burmester and Salduro, Utah, and Reno, Nev., to San Francisco, Calif., and cancellation of certain rates to intermediate points carrying minimum weights lower than proposed reduced rates, found justified, as such changes will restore the basis prevailing prior to *Increased Rates, 1920*, 58 I. C. C., 220, and will bring them down to a level where the traffic will again move in competition with San Francisco bay points. Salt from Utah to San Francisco, 58.

COMPRESSION IN TRANSIT. See **TRANSIT ARRANGEMENTS.**

CONCESSION.

The assessment of average demurrage is a concession from the straight demurrage charge and a privilege or option extended on the part of the carrier. *Penick & Ford (Ltd.) v. Director General*, 173 (177).

CONCURRENCE.

Shipments originated on rails of carriers publishing rates higher than when originating on the line of delivering carrier specified in bill of lading, whose rails also reached point of origin. Complainant asks that lower rates named in tariff of terminal carrier be applied on traffic originating on such other lines, but since carriers on whose lines shipments originated concurred in tariff naming lower rates on traffic to, via, but not from, points on the concurring line, rates charged found legally applicable. *Lieberman Iron Co. v. Director General*, 21.

CONFERENCE RULINGS.

Conference Ruling 225 (b) quoted. *Arizona Rates, Fares, and Charges*, 572 (583).

Conference Ruling 474 (c) quoted. *Mulkey Salt Co. v. Director General, as Agent*, 669 (670).

CONGESTION.

Due to negligence or delays attending commercial transactions, terms of export tariff not complied with, but since shipments did not contribute to congestion any more than they would have done if handled in conformity with the rules, *Held*: Domestic charges assessed found unreasonable as compared with charges on similar export shipments handled in compliance with the rules, and to extent they exceeded charges under tariff provisions subsequently established. Reparation awarded. *Anderson & Co. v. Director General, as Agent*, 64.

CONSTRUCTION OF STATUTE.

Paragraph (4) of section 1 and paragraph (6) of section 15, taken together, were intended by the Congress to supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to the Commission's finding or order. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (276).

The Commission can only act under the jurisdiction conferred upon it by the Congress, and must exercise powers which it now has, subject to limitations which now attach to them, as its jurisdiction and powers are drawn from the statute as it is now. *Id.* (276).

Jurisdiction may be taken away by repeal of the statutes conferring it by necessary implication as well as by express words, but if a statute giving a special remedy is repealed without a saving clause in favor of pending suits all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect, it can not be after, and if a law conferring jurisdiction is repealed without any reservation as to pending cases all such cases fall with the law. *Id.* (276).

A statutory right is to be distinguished from the remedy for its enforcement, but whether the transportation act has taken away a remedy and thereby indirectly destroyed a right of complainants who sought the adjustment of divisions for a period prior to the filing of complaint is not for the Commission to decide. *Id.* (276).

CONSTRUCTIVE PLACEMENT. *See also* DELIVERY.

Demurrage accruing on cars constructively placed at points short of billed destination, following a fire at complainant's plant, found unlawful to extent that charges collected exceeded those that would have accrued had cars been delivered up to the full extent of consignee's physical capacity to receive them. Reparation awarded. *Union Bag & Paper Corp. v. Director General*, as Agent, 424.

The word "tendered" as used in constructive placement provision of demurrage tariff construed to require that shipments be tendered for delivery at billed destination, or, at most, at a point reasonably adjacent to such destination. *Id.* (427).

Embargo placed by Fuel Administrator against complainant's plant became effective while shipments en route and cars were constructively placed in carrier's yards. *Held*: Embargo not applicable to complainant's shipments, and, since demurrage accrued as a result of such constructive placement and not to disability of complainant, demurrage found unlawfully assessed and should be refunded. *Id.* (427).

Demurrage tariff provided for constructive placement when delivery can not be made "on account of act or neglect of consignee or inability of consignee to receive," and that in such circumstances "delivery will be considered to have been made when cars were tendered." *Held*: Unless actual tender is made or consignee has informed carrier that no more cars can be received, rule requires carrier to place cars to full extent of consignee's physical capacity to receive them. *Id.* (426).

Where cars are constructively placed at points short of billed destination, consignees operating under average agreements should be allowed credit for the time necessary to transport the cars from the point of constructive placement to point of final placement. *Id.* (427).

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CONTAINERS. *See* PACKING.

CONTRACTS. *See also* AVERAGE AGREEMENT.

The Commission is without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for the construction, maintenance, and use of industrial or private side tracks, limiting liability for loss and damage caused by fire from locomotives operating over such tracks. *National Industrial Traffic League v. A. & R. R. Co.*, 120. Liability clauses contained in contracts or agreements for maintenance, use, and operation of industrial sidetracks do not involve the question of rates, nor the matter of facilities to be furnished by the railroad company for the transportation of property under its obligation as a common carrier. *Id.* (123).

The demands upon a carrier which lawfully may be made are limited by its duty, but it is not its duty as a common carrier to enter into a contract to lease a railroad siding to a shipper or to enter into an agreement to operate privately owned sidetracks. *Id.* (123).

COST OF PRODUCTION.

The Commission may not require carriers to equalize natural advantages, such as location and cost of production. *United Iron Works Co. v. Director General*, as Agent, 33 (35).

Where producers must bring their products to railroads by dray or boats, involving extra costs, such expenses are a part of the costs of production and the Commission may not properly make them a basis for readjusting rates. *Salt from Utah to San Francisco*, 58 (59).

COST OF SERVICE.

Is but one of the factors taken into consideration in the making of freight rates, and the wide variations in rates make it probable that many of them fail to cover all the factors of operating expense that a careful cost study might allocate against the service. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (279).

Evidence as to, can not be used as a measure of divisions in the absence of evidence in regard to the relation of the joint rates to the total cost of the service performed. *Id.* (283).

Cost and value of service and risk assumed are important considerations in rate making. *Climax Molybdenum Co. v. Director General*, as Agent, 309 (373).

Proposed increased charges of the M. & St. L. R. R. and Railway Transfer Co., for switching interstate shipments at Minneapolis, St. Louis Park, and Hopkins, Minn., found not justified, but inadequacy of present revenues clearly demonstrated by cost figures submitted, and reasonable and just charges prescribed. *Switching and Absorption at Minneapolis*, 646.

Cost of performing switching service at Minneapolis, Minn., discussed. *Id.* (649-651).

When cost figures are used in determining the reasonableness of rates and are the result of painstaking efforts to arrive at just and reasonable results, such figures are not to be disregarded because they may not be correct in every detail and are based in part on estimates. *Id.* (652).

CREOSOTING IN TRANSIT. *See* TRANSIT ARRANGEMENTS.

61 I. C. C.

CUMMINS AMENDMENT. *See also* RELEASED RATES.

Prayer for establishment of rates on molybdenum dependent upon declared or released values based on fact that service required in the transportation of ores of higher values is no greater than on ores of lower values, *Held*: Facts that shipments move over a narrow-gauge line on which grades are heavy and value of molybdenum is extraordinarily high, found not to justify establishment of such rates. *Climax Molybdenum Co. v. Director General*, as Agent, 369.

Carrier's agent had sufficient knowledge as to true value of shipper's product to require notation "Value over \$100 per net ton" to be placed on bills of lading to prevent misdescription. This was in no sense "the value declared or agreed upon in writing as the released value of the property" within the purview of the second Cummins amendment. Billing so indorsed does not limit recovery of the full actual value whatever it might be. *Id.* (371).

If carriers desire to carry rates based upon declared or released values, they should seek approval of rules that will clearly effect the purpose and be free from question as to conformity with the Cummins amendment. *Id.* (371).

DAMAGES.

Upon further hearing, original report 53 I. C. C., 529, rates on fire brick, fire clay, and dobles, from St. Louis and Mexico, Mo., to Quinton, Okla., found unreasonable to extent they exceeded the aggregate of intermediate rates, and reparation awarded, but prior finding that evidence of damage was not sufficient to support an award of reparation under a finding of undue prejudice, affirmed. *Quinton Spelter Co. v. Ft. S. & W. R. R. Co.*, 43.

In original report, 55 I. C. C., 280, rates on limestone moving during federal control from Jamesville, N. Y., to Solvay, N. Y., were found unreasonable and reparation was awarded. Defendants refused to verify reparation statements submitted under Rule V of the Commission's Rules of Practice. Upon further hearing amount of reparation determined. *Solvay Process Co. v. D., L. & W. R. R. Co.*, 86.

Complainant, in complying with Rule V of the Commission's Rules of Practice, authorized to submit an affidavit to effect that it paid and bore the freight charges, with understanding that if defendants object to receipt of such an affidavit further hearing may be requested regarding subject of reparation. *Illinois Zinc Co. v. Director General*, as Agent, 92 (102).

In original reports, 42 I. C. C., 275, and 55 I. C. C., 357, rates on lumber from Portland, Oreg., found unduly prejudicial in favor of other Oregon points in the Willamette Valley, but reparation denied. Upon further hearing reparation awarded on shipments on which complainant was compelled to absorb the difference in freight rates out of their profits. *Inman-Poulsen Lumber Co. v. S. P. Co.*, 185.

Contention that since price of coal was fixed by the Fuel Administration, complainants would not have received any more profit had lower rates been in effect, and award of reparation would permit profits in excess of those allowed by the government, *Held*: Complainants paid and bore unreasonable rates, and are entitled to reparation. They have paid cash out of pocket that should not have been required of them. *Abbott v. Director General*, as Agent, 296 (300).

61 I. C. C.

DAMAGES—Continued.

Refund of overcharges found in original report, 58 I. C. C., 748, ordered paid to vendor, who intervened at further hearing, where it was shown that he reimbursed complainant for freight charges paid. *Ayres, Bridges & Co. v. Director General*, as Agent, 339.

The Commission's power under section 15 of the act is to fix the maximum to be paid as an allowance, and in the exercise of this power it may not require a carrier to make an allowance or fix the precise amount; and it is doubtful whether damages can be awarded for failure to pay except in cases where the allowance is published in the carrier's tariffs and is not more than reasonable for the service. *Rutherford-Brede Co. v. Director General*, as Agent, 515 (517).

When a fourth section departure is protected by an appropriate application no damage can be awarded up to the time when the Commission passes upon the fourth section application unless a case of undue prejudice is made out which might carry with it an award of damages or unless the rate charged from the intermediate point is found unreasonable. *Buckeye Veneer Co. v. Director General*, as Agent, 673 (676).

DEFICIT.

Respondent sought to justify increased rates upon claim that it is operating at a loss and that if proposed increases are not permitted it will be compelled to discontinue operation because it can not further increase its existing deficit. *Held*: Increases found not justified. *Rates Between Ohio River and Cumberland River Points*, 10.

DELIVERY. See also CONSTRUCTIVE PLACEMENT.

Receipt or delivery of c. l. freight on private or industrial tracks is merely the equivalent of similar service on team tracks. *Diversion and Reconsignment Rules*, 385 (391).

DEMURRAGE. See also AVERAGE AGREEMENT; DETENTION.

Tariff provided that "Notice shall be sent or given consignee in writing, or as otherwise agreed to," but made no provision for notice to consignor when shipment refused at destination. Order notify consignee notified by telephone and in person, and when it became apparent that he was not going to accept shipment consignor was notified by letter and disposition orders were given. Demurrage accruing found lawfully assessed. *Hewitt-Lea-Funck Co. v. Director General*, as Agent, 49.

Demurrage charges constitute a portion of the earnings of carriers, and it may well be that a contract or agreement under which credits earned at a particular point or industry on the traffic of one carrier might be used to offset debits incurred in connection with traffic of another, is within the spirit of the inhibition of the antipooling provision of section 7 of the act. *Penick & Ford (Inc.) v. Director General*, 173 (176).

The assessment of average demurrage is a concession from the straight demurrage charge and is a privilege or option extended on the part of the carrier. *Id.* (177).

Consignee failed to unload ore frozen in transit within prescribed free time. Tariff provided that written statement be served upon carrier's agent within free time that lading was frozen upon arrival. Verbal notice given carrier's employee within 48 hours after placement, and since defendant actually knew that frozen condition of ore precluded unloading, demurrage charges assessed found unreasonable. *Reparation awarded. Virginia Iron, Coal & Coke Co. v. Director General*, as Agent, 200.

DEMURRAGE—Continued.

The primary purpose of imposing demurrage is to promote the prompt movement of cars in the public interest. Failure to release cars within a reasonable time is a wrong against other shippers desiring to use them and against the general public, which can to a large extent be avoided by the enforcement of appropriate demurrage rules and penalties. *Id.* (201).

Shippers are entitled to a reasonable free time for loading or unloading cars, and the principle has long been recognized that demurrage should not be imposed for delays occasioned by weather interference. *Id.* (201).

When a shipment is tendered for delivery in a frozen condition and for that reason can not be unloaded within the prescribed free time it is not unreasonable to require that due notice to that effect be given in order that the carrier may have the necessary information upon which to base demurrage charges and be afforded opportunity to take proper steps to expedite unloading. *Id.* (201).

Accruing on cars constructively placed at points short of billed destination, following a fire at complainant's plant, found unlawful to extent they exceeded those that would have accrued had cars been delivered up to the full extent of consignee's physical capacity to receive them. Reparation awarded. *Union Bag & Paper Corp. v. Director General, as Agent, 424.*

Demurrage tariff provided for constructive placement when delivery can not be made "on account of act or neglect of consignee or inability of consignee to receive," and that in such circumstances "delivery will be considered to have been made when cars were tendered." *Held:* Unless actual tender is made or consignee has informed carrier that no more cars can be received, rule requires carrier to place cars to full extent of consignee's physical capacity to receive them. *Id.* (426).

Embargo placed by Fuel Administrator against complainant's plant became effective while shipments en route and cars were constructively placed in carrier's yards. *Held:* Embargo not applicable to complainant's shipments, and since demurrage accrued as a result of such constructive placement and not to disability of complainant, demurrage found unlawfully assessed and should be refunded. *Id.* (427).

Denial of switching reclaims to Birmingham Southern R. R., on foreign cars handled under division of joint rate, held not to be unreasonable or unduly prejudicial, but the assessment of demurrage against that road under uniform demurrage code, without allowance of additional free time to cover the period actually required for switching service performed, disapproved and substitute prescribed. *Birmingham Southern R. R. Co. v. Director General, as Agent, 551.*

While there is nothing inherent in demurrage which precludes assessing it against an industrial common carrier responsible for delay in car movement who has profited by the use of the foreign car, the assessment of demurrage under the uniform code against such lines, without allowance of additional free time to cover the period actually required for service performed, is clearly unreasonable. *Id.* (554).

Where short line found not to be a common carrier subject to the act, its demurrage tariffs on file with the Commission are of no force and effect, and demurrage tariffs of trunk lines are applicable. *National Tube Co. v. P., C., O. & St. L. R. R. Co., 590 (598).*

DEMURRAGE—Continued.

Following *Birmingham Southern R. R. Co.*, 61 I. C. C., 551, arrangements between common-carrier short lines and their trunk line connections with respect to use and detention of foreign cars and basis of settlement of accrued charges prescribed. *National Tube Co. v. P., C., O. & St. L. R. R. Co.*, 590; *Illinois Northern Ry.*, 629; *Pullman R. R. Co.*, 637.

Charges accruing while shipper was endeavoring to obtain necessary permit to have shipments reconsigned to embargoed points found not unreasonable or unlawful as tariffs of carriers specifically prohibited reconsignment to embargoed points. *Maguire & Co. v. Director General*, as Agent, 658.

DENSITY OF TRAFFIC. See **SPORADIC MOVEMENT; VOLUME OF TRAFFIC.**

DESIRABILITY OF TRAFFIC.

Copper bullion is desirable traffic, as it moves throughout the year, loads heavily, can be carried in any box car capable of being locked, does not impair the availability of the equipment for return loads of other traffic, and despite its considerable value is practically free from loss and damage claims. *Smelter Products from Nevada and Utah*, 374 (376).

Soap is a desirable article of transportation in that it is of heavy weight density, is shipped in compact boxes of wood or fiber and may be easily stored in cars with other freight. Claims for loss or damage to shipments are negligible. *Proctor & Gamble Distributing Co. v. A. C. Ry.*, 700 (701).

DETENTION. See **DEMURRAGE.**

DIFFERENTIAL. See also **ARBITRARIES.**

Rates on rosin and turpentine from Perry, Athena, Carbur, and Salem, Fla., to Chicago, St. Paul, Minneapolis, and other points in Illinois, Wisconsin, Minnesota, Iowa, and states west thereof, found unduly prejudicial to extent they exceed rates from Jacksonville, Fla., by more than 3 cents on rosin and 6 cents on turpentine. Reparation denied. *Barber Co. v. Director General* as Agent, 23.

Rates on iron pipe fittings from Okmulgee, Okla., to points in the Dallas-Fort Worth group, to Texas common points, and to Houston and Galveston, Tex., found unduly prejudicial to extent they exceed rates not less than 9 cents lower than from St. Louis, Mo., to same destinations. Reasonable rates prescribed and reparation awarded. *United Iron Works Co. v. Director General*, as Agent, 33 (42).

Rates on brick (except bath or enamel), hollow building tile, and fire clay, in straight or mixed carloads, from Great Falls, Mont., to certain points in Wyoming found unreasonable and unduly prejudicial to extent they exceed certain differentials under the rates from Denver, Colo. Reasonable and nonprejudicial relationship prescribed. *Great Falls Brick & Tile Co. v. Director General*, 178.

Rates on salt cake from Newell, Pa., and Hegewisch and West Hammond, Ill., to International Falls, Minn., found unreasonable to extent they exceeded the combination rates to Duluth, Minn., and Barksdale, Wis., by more than 5.5 cents. Reparation awarded. *Minnesota & Ontario Paper Co. v. Director General* as Agent, 403.

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DIFFERENTIAL—Continued.

Rates on crushed rock from Leeds, Mo., and Rosedale, Kans., located outside the Kansas City switching district, to destinations within a radius of 150 miles from Kansas City, Mo., on lines of defendants other than originating carriers found not unduly prejudicial but unreasonable to extent they exceed by more than 1 cent the rates from Kansas City to same destinations. Measure of reasonable rates prescribed and reparation denied. *Prince-Johnson Limestone Co. v. Director General*, as Agent, 602.

Relationship of rates on potatoes from points in Minnesota and Wisconsin, within the Princeton group, to destinations in trunk-line territory found unduly prejudicial to shippers at those points and unduly preferential of shippers located at other Wisconsin points to extent that the rates from the Princeton group points exceed those from the other Wisconsin points by more than 3 cents per 100 pounds. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 680 (683).

Relationship of rates on newsprint paper from Sault Ste. Marie and Fort Frances, Ontario, to destination in the west and southwest found unduly prejudicial to those points and unduly preferential of competing manufacturing points in Minnesota and Wisconsin to extent the rates from points found prejudiced exceed the rates from the preferred points by more than the differentials herein prescribed. *Lake Superior Paper Co. (Ltd.) v. Director General*, 709.

DIRECTOR GENERAL. See **FEDERAL CONTROL.**

DISCRIMINATION. See also **PREFERENCES AND PREJUDICES**; **SECTION 2.**

It is not sufficient to consider the rates to an intermediate market, nor alone the rates from such market if the question of discrimination between markets is to be determined, but there must be consideration of the entire rate from point of production to ultimate destination. *Cairo Board of Trade v. A., T. & S. F. Ry. Co.*, 219 (220).

A discrimination that is no more broad than is warranted by the dissimilarity in the circumstances and conditions can not be condemned as unlawful. *Diversions and Reconsignment Rules*, 385 (391).

Upon further hearing, original report 60 I. C. C., 61, intrastate passenger fares and excess baggage charges, in the state of Montana, of the Butte, Anaconda & Pacific Ry. Co., an electric line, lower than the corresponding interstate fares and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Montana Rates and Fares*, 500.

Certain intrastate rates, fares, and charges, required by state authority to be maintained within the state, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. *North Dakota Rates, Fares, and Charges*, 504; *Arizona Rates, Fares, and Charges*, 572.

61 I. C. C.

DISTANCE RATES.

Following *Birdsboro Case*, 49 I. C. C., 681, distance scale of rates was prescribed from Birdsboro, Pa., on crushed rock, but shipments do not originate at that point. Commission's order omitted Monocacy, Pa., at which point shipments do originate, and carriers after considerable delay established from Monocacy the distance scale prescribed from Birdsboro. *Held*: Rates charged on shipments moving during interim found unreasonable and reparation awarded. *Birdsboro Stone Co. v. P. R. R. Co.*, 46.

Proposed increased rates on fuel wood, pulp wood, and wood bolts between points in Idaho, Oregon, and Washington found not justified, as their approval would not bring about a uniform and nonprejudicial basis for general application throughout those states. Reasonable and nonprejudicial distance scale prescribed. *Wood Rates between North Pacific Coast Points*, 159.

Proposed cancellation of tariff provision applicable in connection with distance rates prescribed in *Galveston Commercial Assn.*, 57 I. C. C., 390, providing that lowest rate applicable via any routes shall be applied via other routes accepting the freight for transportation, found not justified. *Iron and Steel Articles from Galveston and Houston to Louisiana*, 270.

Rates on hardwood logs from stations on the Y. & M. V. R. R. in Mississippi to Dyersburg and Trimble, Tenn., on the Illinois Central, the application of which is conditioned upon the manufactured product being shipped out over the latter line, found unreasonable to extent they exceed defendants' individual distance scales of net rates similarly conditioned applicable between points on their respective lines to be applied as a joint continuous distance scale. Reasonable maximum scale prescribed. *North Vernon Lumber Co. v. I. C. R. R. Co.*, 355.

DISTANCES.

In arriving at distances, rail routes can not be disregarded and cross-country mileages used, as rail rates are not so constructed. *Soda Products from Saltville, Va.*, 559 (562).

DISTURBANCE OF ADJUSTMENT.

Proposed reduced rates on salt from Burmester and Salduro, Utah, and Reno, Nev., to San Francisco, Calif., and cancellation of certain rates to intermediate points carrying minimum weights lower than proposed reduced rates, found justified, as the proposed changes will restore the basis prevailing prior to *Increased Rates, 1920*, 58 I. C. C., 220, and will bring them down to a level where the traffic will again move in competition with San Francisco Bay points. *Salt from Utah to San Francisco*, 58.

Carriers propose to restrict absorptions of switching charges of the Fort Worth Belt Ry. to specific amounts which are less than the present switching charges from or to industries and public stockyards at Fort Worth, Tex. *Held*: Line-haul carriers absorb full amount of switching charges to and from competing markets which are on a rate parity with Fort Worth, and as that relationship would be disrupted proposed increased charges found not justified. *Absorption of Switching Charges at Fort Worth, Tex.*, 73.

61 I. C. C.

DISTURBANCE OF ADJUSTMENT—Continued.

To effectuate the relative adjustment of class rates prescribed in *Wisconsin Rate Cases*, 44 I. C. C., 602, from eastern points to La Crosse, Wis., on the one hand and Dubuque, Iowa, St. Paul, Minn., and Chicago, Ill., on the other, disrupted by various increases permitted since that decision, present class rates to La Crosse found unreasonable and unduly prejudicial and reasonable and nonprejudicial rates prescribed. *La Crosse Chamber of Commerce v. A. A. R. R. Co.*, 289.

Double increases applied to both factors of combination rates on coal from points in southern Illinois to Springfield, Mo., via routes in connection with the St. L.-S. F. R. R. Co., which destroyed the long-existing relationships and resulted in rates clearly out of line with others from the same territory and groups, and in some instances from the same points of origin, found unreasonable. Reparation awarded. *Abbott v. Director General*, as Agent, 296.

Substitution by the Director General of a flat increase of 4.5 cents on petroleum and products, in lieu of 25 per cent increase, as authorized under general order No. 28, not found unreasonable or unduly prejudicial, as such readjustment was made in an effort to minimize serious disturbances of rate relationships and met with the approval of producers, refiners, and jobbers generally. *Barnett Oil & Gas Co. v. Director General*, as Agent, 568.

A rate increase uniform in amount necessarily tends to preserve rather than disrupt preexisting relationships. This is not true of a percentage increase. *Id.* (570).

Relationship of rates on coal from mines in Kentucky in L. & N. group No. 1 to Jackson, Mich., and Toledo, Ohio, disrupted by application of increases under general order No. 28 and subsequently readjusted, found not to have been unreasonable or unjustly discriminatory. *Dewey Fuel Co. v. Director General*, as Agent, 697.

DIVERSION. *See* RECONSIGNMENT.

DIVISIONS.

In the form of absorptions can not be predicated solely upon the amount of revenue necessary to insure successful operation, and it is improper to attempt forcible adjustment of divisions between carriers by increasing the through rates which shippers must pay. Absorption of Switching Charges at Fort Worth, Tex., 78 (75-76).

Attempt of line-haul carriers and belt line to force an issue as to their divisional arrangements by subjecting shippers to increased charges under schedules which limited the amount of switching charges to be absorbed condemned by the Commission. *Swift & Co. v. Ft. W. & D. C. Ry. Co.*, 77 (79).

While divisions may be considered as evidence, they are not conclusive and ordinarily do not afford a sound basis upon which to judge the reasonableness of rates. *American Creosoting Co. v. Director General*, 145 (151).

Increased charges which result from the cancellation of joint rates can not be justified on the ground that the divisions are unsatisfactory. Coal from Illinois to Michigan, 195.

Accorded the Pittsburgh & West Virginia and the West Side Belt railroads on bituminous coal from stations on their lines to various destinations on the lines of defendants found unreasonable. Measure of divisions prescribed for the future and adjustment required from September 1, 1920. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272.

DIVISIONS—Continued.

The transportation act, 1920, has removed all doubt as to the Commission's authority to prescribe for the future "just, reasonable, and equitable divisions" of joint rates, fares, or charges. *Id.* (274).

Under the interstate commerce act prior to its amendment by the transportation act, 1920, the Commission could require the adjustment of divisions prior to filing of complaint, but under paragraph (6) which was added to section 15 by the transportation act, it can require adjustment of divisions only from the time the complaint was filed. *Id.* (275-276).

Paragraph (4) of section 1 and paragraph (6) of section 15, taken together, were intended by the Congress to supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to the Commission's finding or order. *Id.* (276).

A statutory right is to be distinguished from the remedy for its enforcement, but whether the transportation act has taken away a remedy and thereby indirectly destroyed a right of complainants who sought the adjustment of divisions for a period prior to the filing of complaint is not for the Commission to decide. *Id.* (276).

Paragraph (6) of section 15 recognizes clearly that divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers. *Id.* (282).

One of the duties of a common carrier is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, and equity does not necessarily demand that they be compensated by larger divisions in instances where it might be more advantageous to confine traffic to their own lines. *Id.* (283).

It was to avoid the unduly prejudicial effect of strategic advantages upon the weaker carriers and the resulting impairment of transportation facilities that the Commission's powers over divisions were clarified and strengthened, and it is not prevented by paragraph (6) of section 15 of the act from taking into consideration any circumstances and conditions which have weight in measuring the justice and reasonableness of divisions. *Id.* (283).

Evidence as to cost of service can not be used as a measure of divisions in the absence of evidence in regard to the relation of the joint rates to the total cost of the service performed. *Id.* (283).

For the purpose of fixing divisions separate corporate organizations of commonly controlled and operated carriers should be disregarded and they should be treated as one system. *Id.* (284).

Proposed increased rates on grain and flour from Omaha, Nebr., and other points to Duluth, Minn., and other destinations, found not justified where the sole reason for the proposed increases was that respondents were no longer in accord as to divisions. Grain and Flour from Missouri River Points to Duluth, 807.

Proposed increased joint minimum rates and charges on l. c. l. shipments and new individual and joint regulations and practices affecting such rates and charges found not justified where the matter was mainly a question of divisions and of the method of rate making. Minimum Charges on Less-than-Carload Shipments, 727.

DOMESTIC RATES. *See* EXPORT AND DOMESTIC; IMPORT AND DOMESTIC.

61 I. C. C.

DOUBLE INCREASE.

Applied to both factors of combination rates on coal from points in southern Illinois to Springfield, Mo., via routes in connection with the St. L.-S. F. R. R., which destroyed the long existing relationships and resulted in rates clearly out of line with others from the same territory and groups, and in some instances from the same points of origin, found unreasonable. Reparation awarded. *Abbott v. Director General*, as Agent, 296.

DRAYAGE.

Where producers must bring their products to railroads by dray or boats involving extra costs, such expenses are a part of the costs of production and the Commission may not properly make them a basis for readjusting rates. *Salt from Utah to San Francisco*, 58 (59).

DUTY OF CARRIER.

The demands upon a carrier which lawfully may be made are limited by its duty, but it is not its duty as a common carrier to enter into a contract to lease a railroad siding to a shipper or to enter into an agreement to operate privately owned side tracks. *National Industrial Traffic League v. A. & R. R. Co.*, 120 (123).

One of the duties of common carriers is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, and equity does not necessarily demand that they be compensated by larger divisions in instances where it might be more advantageous to confine traffic to their own lines. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (283).

Carriers are required to deliver or receive c. l. freight at the usual points of loading or unloading unless such points are so located that the request for receipt and delivery at such spots could not, in view of general usage, be regarded as reasonable. *Edge Moor Iron Co. v. Director General*, as Agent, 537 (540).

Rate and route inserted by shipper in bill of lading did not coincide. Initial carrier's agent failed to ascertain from shipper before forwarding whether instructions as to rate or route should govern. *Held*: Following *Conf. Ruling 474 (c)*, shipments misrouted. Reparation awarded. *Mulkey Salt Co. v. Director General*, as Agent, 669.

EARNINGS. See also TON-MILE REVENUE.

Divisions in the form of absorptions can not be predicated solely upon the amount of revenue necessary to insure successful operation, and it is improper to attempt forcible adjustment of divisions between carriers by increasing the through rates which shippers must pay. *Absorption of Switching Charges at Fort Worth, Tex.*, 73 (75-76).

The Commission is vested with specific authority to initiate rates that will protect revenues, and where carriers will suffer depletion of revenue by reason of the establishment of new joint rates, appropriate measures can be taken for their protection. *Intermediate Rate Asso. v. Director General*, 226 (246).

ELECTRIC LINE.

One-way, round-trip, and commutation fares between stations on the W. B. & A. E. R. R. Co., an electric line in Maryland and Washington, D. C., found not unreasonable or otherwise unlawful. *W. B. A. Commuters Club v. W., B. & A. E. R. R. Co.*, 302.

ELECTRIC LINE—Continued.

Upon further hearing, original report 60 I. C. C., 61, intrastate passenger fares and excess-baggage charges, in the state of Montana, of the Butte, Anaconda & Pacific Ry. Co., an electric line, lower than the corresponding interstate fares and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found duly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Montana Rates and Fares*, 500.

EMBARGO.

Due to decree prohibiting entry into France of luxuries, shipment was stored and subsequently sold for domestic consumption. Contention that under the circumstances export storage charges should have been assessed found not sustained. Domestic storage charges found legally applicable and not unreasonable. *Manufacturers Export Clearing House v. Director General*, as Agent, 85.

Tariff rule providing that orders for diversion or reconsignment of commodities other than perishable freight, coal, coke, or fuel oil will not be accepted to a station or point of delivery against which an embargo was in force when the shipment left point of origin disapproved. *Diversion and Reconsignment Rules*, 385 (388).

Due to an embargo via the normal route, shipper was obliged to route intrastate shipments for delivery via route over which higher rate applied. *Held*: As distances over both routes practically the same, and shipments moved during federal control when the carriers were being operated as part of a national system and were, for then-present purposes, a single line, higher rate charged found unreasonable. Reparation awarded. *Barrett Co. v. Director General*, as Agent, 401.

Placed by Fuel Administrator against complainant's plant became effective while shipments en route and cars were constructively placed in carrier's yards. *Held*: Embargo not applicable to complainant's shipments, and since demurrage accrued as a result of such constructive placement and not to disability of complainant, demurrage found unlawfully assessed and should be refunded. *Union Bag & Paper Corp. v. Director General*, as Agent, 424 (427).

Demurrage charges accruing while shipper was endeavoring to obtain necessary permit to have shipments reconsigned to embargoed points found not unreasonable or unlawful, as tariffs of carriers specifically prohibited reconsignment to embargoed points. *Maguire & Co. v. Director General*, as Agent, 658.

EMERGENCY RATES.

Rate legally applicable on ice from Jacksonville, Fla., to Atlanta, Ga., found not unreasonable as compared with lower rate in the opposite direction or as compared with lower rate temporarily established after shipments moved to meet an ice shortage at Atlanta. *Atlantic Ice & Coal Corp. v. S. Ry. Co.*, 111.

EMERGENCY SHIPMENT. See SPORADIC MOVEMENT.**ENGINE-HOUR BASIS.**

In making a general separation of the expenses chargeable to interchange and interior plant switching the engine hour will usually be found a safer guide than number of cars handled. *Illinois Northern Ry.*, 629 (633-634).

EQUALIZING RATES. See also PARITY OF RATES.

The Commission may not require carriers to equalize natural advantages, such as location and cost of production. *United Iron Works Co. v. Director General*, as Agent, 33 (35).

EQUALIZING RATES—Continued.

Rates on grain from points in Iowa, Nebraska, and Missouri, to Cairo, Ill., found not unreasonable, discriminatory, or unduly prejudicial, as substantial equalization appears to have been effected at Cairo through the medium of transit, and the Commission is not warranted in requiring carriers to reduce their inbound rates to Cairo for the purpose of equalizing that market with St. Louis, Mo., and Memphis, Tenn. *Cairo Board of Trade v. A., T. & S. F. Ry. Co.*, 219.

ESTIMATED WEIGHT. See **WEIGHT.**

ESTIMATES.

When cost figures are used in determining the reasonableness of rates and are the result of painstaking efforts to arrive at just and reasonable results, such figures are not to be disregarded because they may not be correct in every detail and are based in part on estimates. *Switching and Absorption at Minneapolis*, 646 (652).

EXCESS BAGGAGE. See **BAGGAGE.**

EXPORT AND DOMESTIC.

Due to negligence or delays attending commercial transactions, terms of export tariff not complied with but since these shipments did not contribute to congestion any more than they would have done if handled in conformity with the rules, *Held*: Domestic charges assessed found unreasonable as compared with charges on similar export shipments handled in compliance with the rules, and to extent they exceeded charges under tariff provisions subsequently established. Reparation awarded. *Anderson & Co. v. Director General*, as Agent, 64.

Due to decree prohibiting entry into France of luxuries, shipment was stored and subsequently sold for domestic consumption. Contention that under the circumstances export storage charges should have been assessed found not sustained. Domestic storage charges found legally applicable and not unreasonable. *Manufacturers Export Clearing House v. Director General*, as Agent, 85.

Domestic rates legally applicable on evaporated milk from points in Wisconsin and Indiana to New Orleans, La., and Mobile, Ala., for export, found not unreasonable as compared with lower export rates maintained to Atlantic ports, which lower rates were subsequently established to New Orleans and Mobile. *Nestle's Food Co. (Inc.) v. M. & O. R. R. Co.*, 695.

EXPRESS RATES.

Express rate and icing charge on cantaloupes from Horatio, Ark., to New Orleans, La., found unreasonable as compared with lower rates and charges maintained to more distant points. Reparation awarded on basis of lower rate and icing charge subsequently established. *Gateway Produce Co. v. American Ry. Exp. Co.*, 347.

Proposal of American Ry. Express Co. to increase estimated weights on kale, lettuce, and spinach, in bushel containers and in barrels, together with c. l. minimum weights on same, found not justified. Present weights have been in effect since the inception of the industry, rates have been made with relation thereto, and the practical and only effect of the proposed increases would be a substantial increase in transportation charges. *Increased Weights on Kale, Lettuce, and Spinach*, 593.

FACTOR. See **PROPORTIONAL RATES.**

61 I. C. C.

FALSE FLOORS.

Failure of carriers to equip refrigerator cars with temporary false floors for transportation of potatoes, under carriers' protective service against freezing, and refusal to pay shipper an allowance to reimburse them for cost of supplying same, found not in violation of the act to regulate commerce or the federal control act. Any redress to which shipper may be entitled found to rest with the courts. *Rutherford-Brede Co. v. Director General*, as Agent, 515.

FARES. See **COMMUTATION FARES AND TICKETS; PASSENGER FARES.**

FEDERAL CONTROL.

Intrastate shipments moving prior to the period of federal control are not within the jurisdiction of the Commission. *Sinclair Refining Co. v. Director General*, as Agent, 18.

Rates on spelter from Peru and La Salle, Ill., to eastern trunk line and New England territories, increased on June 25, 1918, under general order No. 28, resulting in increases in excess of 25 per cent, the maximum authorized under that order, found not unreasonable or unduly prejudicial with relation to the corresponding rates from competing western points. *Illinois Zinc Co. v. Director General*, as Agent, 92 (105).

Where complainant performed practically all terminal service in connection with, and furnished all cars for, the transportation of intrastate shipments of wet marl, minimum charge of \$15 per car assessed after June 25, 1918, under general order No. 28, found unreasonable to extent it exceeded \$7.50 per car. Reparation awarded. *Peerless Portland Cement Co. v. Director General*, as Agent, 169.

It was within the discretionary power of the Director General to treat the railroads as a unit or as separate lines, and while he might have provided for assessment of demurrage under a single average agreement at complainant's plant, on traffic handled by three different lines, he did not do so, and nothing in the federal control act required that he should so do. *Penick & Ford (Ltd.) v. Director General*, 173 (177).

The reasonableness of increases actually applied by the railroads to combination rates can not be determined entirely by a construction of general order No. 28, but the controlling question is whether the resulting rates were unreasonable or otherwise unlawful. *Abbott v. Director General*, as Agent, 296 (299).

Domestic rates on imported nitrate of soda from New York, N. Y., and Baltimore, Md., to East St. Louis, Ill., established pursuant to the cancellation of all import rates by the Director General under general order No. 28, found unreasonable to extent they exceeded lower domestic rate subsequently established. Reparation awarded. *Monsanto Chemical Works v. P. R. R. Co.*, 399.

Due to an embargo via the normal route, shipper was obliged to route intrastate shipments for delivery via route over which higher rate applied. *Held*: As distances over both routes practically the same and shipments moved during federal control when the carriers were being operated as part of a national system, and were, for then present purposes, a single line, higher rate charged found unreasonable. Reparation awarded. *Barrett Co. v. Director General*, as Agent, 401.

Where Director General not made a party defendant, shipments made during period of federal control will not be considered. *Berry Bros. (Inc.) v. C. & N. W. Ry. Co.*, 405.

FEDERAL CONTROL—Continued.

Domestic rate on liquid asphalt, in tank cars, from Mereaux, La., to Milwaukee, Wis., established by the Director General on June 25, 1918, on which date all import rates were canceled, found unreasonable to extent it exceeded lower domestic rate subsequently established when Mereaux was placed on the New Orleans rate basis. Reparation awarded. *Johns-Manville Co. v. Director General*, as Agent, 420.

Rates on coal from mines at Hillsboro, Ill., to complainant's plant, located at that point, increased by Director General under general order No. 28, subsequently reduced, and later increased to basis originally established under that order, found not unreasonable when consideration given to increased operating and other costs. *Schram Glass Mfg. Co. v. Director General*, as Agent, 435.

A readjustment of rates initiated by the Director General under general order No. 28, resulting in reductions, is not an admission of the reasonableness of the lower rates nor a confession that he regarded the higher rates originally established under that order, as unreasonable. *Id.* (437).

Domestic rate on imported nitrate of soda from Norfolk, Va., and Baltimore, Md., to points in c. f. a. territory, established by the Director General on June 25, 1918, on which date all import rates were canceled, found unreasonable to extent it exceeded lower domestic rate established in compliance with findings in *General Chemical Co.*, 57 I. C. C., 222, which lower rate is prescribed for the future. *King Powder Co. v. Director General*, as Agent, 459.

Substitution by the Director General of a flat increase of 4.5 cents on petroleum and products, in lieu of 25 per cent increase as authorized under general order No. 28, not found unreasonable or unduly prejudicial as such readjustment was made in an effort to minimize serious disturbances of rate relationships and met with the approval of producers, refiners, and jobbers generally. *Barnett Oil & Gas Co. v. Director General*, as Agent, 568.

Tank cars not belonging to the carrier were switched at Pittsburgh, Pa., during federal control, by individual power, the carrier merely providing the use of its tracks. Charges assessed on basis of those intended to cover the entire cost of transportation found unreasonable to extent they exceeded those subsequently established for the service in question. Reparation awarded. *Crucible Steel Co. of America v. Director General*, as Agent, 655.

Domestic rates on imported nitrate of soda from New York, N. Y., and points taking same rates, and Baltimore, Md., to Sandusky, Ohio, and from Baltimore, Md., to Ivorydale, Ohio, assessed as a result of cancellation by the Director General of all import rates under general order No. 28, found unreasonable to extent they exceeded lower rates established subsequent to *General Chemical Co.*, 57 I. C. C., 222. Reparation awarded. *Jarecki Chemical Co. v. Director General*, as Agent, 692.

Relationship of rates on coal from mines in Kentucky in L. & N. group No. 1 to Jackson, Mich., and Toledo, Ohio, disrupted by application of increases under general order No. 28 and subsequently readjusted, found not to have been unreasonable or discriminatory. *Dewey Fuel Co. v. Director General*, as Agent, 697.

FEDERAL CONTROL—Continued.

Minimum charge of \$15 per car established by the Director General on June 25, 1918, and assessed on wet phosphate rock moving during federal control from Alafia, Fla., to Agricola, Fla., found unreasonable to extent it exceeded 20 cents per long ton, minimum marked capacity of car, subsequently established. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 751.

Increased charges instituted by the Director General on June 25, 1918, and assessed on shipments of coal moving during federal control by complainant's own power, between its plants at Pittsburgh, Pa., in cars furnished by the Director General and over tracks of defendant carrier, found unreasonable to extent they exceeded lower charges subsequently established for the service in question. Reparation awarded. *Crucible Steel Co. of America v. Director General*, as Agent, 753.

Movements between complainant's plants, located in the same city, found to be intrastate traffic and subject to the Commission's jurisdiction under section 206 (c) of the transportation act, 1920, because invoked by "prayer for reparation account of damages caused by collection or enforcement by or through the President during federal control of charges (including those applicable to intrastate traffic), which were unjust, unreasonable, * * *." *Id.* (754).

FILING AND POSTING.

Interstate shippers are liable to pay the rate fixed by the printed and published schedules of carriers on file with the Commission. *Lieberman Iron Co. v. Director General*, 21 (22).

FINANCIAL CONDITIONS.

Financial condition of a carrier, although an important matter for consideration, does not in itself warrant an increase in rates. Coal from Cumberland R. R. to Southeastern Points, 80 (82).

A public-service corporation may not rely upon its financial condition as a justification for refusal to establish reasonable rules and regulations. Limitations of Liability in Transmitting Telegrams, 541 (550).

FIRE.

The Commission is without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for the construction, maintenance, and use of industrial or private sidetracks, limiting liability for loss and damage caused by fire from locomotives operating over such tracks. *National Industrial Traffic League v. A. & R. R. Co.*, 120.

Demurrage accruing on cars constructively placed at points short of billed destination, following a fire at complainant's plant, found unlawful to extent that charges collected exceeded those that would have accrued had cars been delivered up to the full extent of consignee's physical capacity to receive them. Reparation awarded. *Union Bag & Paper Corp. v. Director General*, as Agent, 424.

FOREIGN CARS.

Following *Birmingham Southern R. R. Co.*, 61 I. O. C., 551, arrangements between common carrier short lines and their trunk line connections with respect to use and detention of foreign cars and basis of settlement of accrued charges, prescribed. *National Tube Co. v. P., O., C. & St. L. R. R. Co.*, 590; *Illinois Northern Ry.*, 629; *Pullman R. R. Co.*, 637.

FOREIGN COUNTRY. See ADJACENT FOREIGN COUNTRY; CANADA.

61 I. O. C.

FORT WORTH BELT RAILWAY COMPANY.

Described. Absorption of Switching Charges at Fort Worth, 73 (74). Found to be a switching agency employed by the line-haul carriers in completion of contracts between carriers and shippers, whose charges should be a part of the freight charges made to the shipper, and not in addition thereto. *Id.* (76).

FOSTERING COMMERCE.

The Commission has little, if any power, and no inclination to adjust rates for the purpose of retarding or promoting progress and development of a particular section of the country. *Intermediate Rate Asso. v. Director General*, 226 (248).

FREE TIME. *See* DEMURRAGE.

FREE TRANSPORTATION.

Allegation of inefficient management based upon fact that a close intercorporate relationship exists between two separately managed and operated carriers whose rails parallel each other and that company materials should be transported free or at reduced rates, *Held*: Following *Conf. Ruling 225* (b), allegation not sustained. *Arizona Rates, Fares, and Charges*, 572 (582-583).

FREEZING. *See also* WEATHER INTERFERENCE.

Failure of carriers to equip refrigerator cars with temporary false floors for transportation of potatoes, under carriers' protective service against freezing, and refusal to pay shipper an allowance to reimburse them for cost of supplying the same found not in violation of the act to regulate commerce or the federal control act. Any redress to which shipper may be entitled found to rest with the courts. *Rutherford-Brede Co. v. Director General*, as Agent, 515.

FUEL.

Report of the Commission in response to Senate Resolution relating to the increased cost of fuel to steam railroads of the United States for the year 1920 as compared with the cost for the year 1919. Increased Cost of Railroad Fuel, 1920, 761.

FUEL ADMINISTRATOR.

Contention that, since price of coal was fixed by the Fuel Administration, complainants would not have received any more profit had lower rates been in effect, and award of reparation would permit profits in excess of those allowed by the government, *Held*: Complainants paid and bore unreasonable rates and are entitled to reparation. They have paid cash out of pocket that should not have been required of them. *Abbott v. Director General*, as Agent, 296 (300).

Embargo placed by Fuel Administrator against complainant's plant became effective while shipments en route and cars were constructively placed in carrier's yards. *Held*: Embargo not applicable to complainant's shipments, and since demurrage accrued as a result of such constructive placement and not to disability of complainant, demurrage found unlawfully assessed and should be refunded. *Union Bag & Paper Corp. v. Director General*, as Agent, 424 (427).

FURTHER HEARING. *See also* REARGUMENT; REHEARING.

In *Oriental Textile Mills*, 48 I. C. C., 31, the Commission denied a c. l. rating on hair and wool press cloth from Houston, Tex., to points in the southeast. Upon further hearing and a more comprehensive record applicable any-quantity first-class rates found unreasonable when applied to c. l. shipments. Reasonable maximum c. l. rates prescribed. *Interstate Cotton-Seed Crushers' Asso. v. Director General*, 1.

FURTHER HEARING—Continued.

- In original report, 57 I. C. C., 215, the Commission prescribed reasonable basis for the removal of relatively unreasonable and unduly prejudicial class and commodity rates between South Bend, Mishawaka, Elkhart, Goshen, Nappanee, and Michigan City, Ind., and points in eastern trunk line and New England territories. Upon further hearing original report modified by eliminating Holland, Mich., from, and including Water-vliet, Mich., in, the 94 per cent group. Findings in all other respects affirmed. *South Bend Chamber of Commerce v. Director General*, 67.
- In original report, 55 I. C. C., 280, rates on limestone moving during federal control from Jamesville, N. Y., to Solvay, N. Y., were found unreasonable and reparation was awarded. Defendants refused to verify reparation statements submitted them under Rule V of the Commission's Rules of Practice. Upon further hearing amount of reparation determined. *Solvay Process Co. v. D., L. & W. R. R. Co.*, 86.
- In original reports, 42 I. C. C., 275, and 55 I. C. C., 357, rates on lumber from Portland, Oreg., found unduly prejudicial in favor of other Oregon points in the Willamette Valley, but reparation denied. Upon further hearing reparation awarded on shipments on which complainant was compelled to absorb the difference in freight rates out of profits. *Inman-Poulsen Lumber Co. v. S. P. Co.*, 185.
- Refund of overcharge found in original report, 58 I. C. C., 748, ordered paid to vendor, who intervened at further hearing, where it was shown that he reimbursed complainant for freight charges paid. *Ayres, Bridges & Co. v. Director General, as Agent*, 389.
- Upon further hearing, previous report, 52 I. C. C., 42, defendants' refusal to maintain joint rates on lumber and forest products on the coast-group basis from points on the Washington Western, while maintaining rates on such basis from points in Washington and Oregon on their own branch lines, proprietary lines, or independent connections, found to result in undue prejudice. Reparation denied. *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 408.
- Upon further hearing, original report 56 I. C. C., 263, rate of 21 cents on coconut oil, in tank-car loads, from Charleston, S. C., to Savannah, Ga., found unreasonable to extent it exceeded 16 cents, and unduly prejudicial to extent it exceeded the rate on cottonseed oil. Reparation awarded. *Southern Cotton Oil Co. v. Director General*, 454.
- Upon further hearing, original report, 60 I. C. C., 61, intrastate passenger fares and excess-baggage charges, in the state of Montana, of the Butte, Anaconda & Pacific Ry. Co., an electric line, lower than the corresponding interstate fares and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Montana Rates and Fares*, 500.

GENERAL ORDER NO. 28. See FEDERAL CONTROL.

GRAZING IN TRANSIT. See TRANSIT ARRANGEMENTS.

GROUP RATES. See also BLANKET RATES.

- Are made with reference to the average distance to all points within the group. *Goodman Drilling Co. v. Director General, as Agent*, 164 (167).
- Upon further hearing, previous report, 52 I. C. C., 42, defendants' refusal to maintain joint rates on lumber and forest products on the coast-group basis from points on the Washington Western, while maintaining rates on such basis from points in Washington and Oregon on their own branch lines, proprietary lines, or independent connections, found to result in undue prejudice. Reparation denied. *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 408.

GUARANTY PERIOD.

State commission after termination of federal control found certain intrastate rates to be unreasonable and filed application with the Commission, under section 208 of the transportation act, 1920, for approval of its order awarding reparation during the guaranty period, March 1 to September 1, 1920. *Peerless Portland Cement Co. v. Director General*, as Agent, 169 (171).

HANDLING.

Proposed increased charges for handling freight over the piers at New Orleans, La., and points in the New Orleans district, found justified in part. Handling Charges at Louisiana Ports, 379.

HEARINGS. See JOINT HEARING.

ICING. See REFRIGERATION.

ILLINOIS NORTHERN RAILWAY.

History and description of. Illinois Northern Ry., 629-630.

Found to be a common carrier subject to the act. *Id.* (634).

IMPORT AND DOMESTIC.

Tariff restricted application of import rate to traffic stored in possession of inland carriers or appraisers' stores, but subsequently was made applicable to shipments stored in privately owned warehouses. Domestic rates charged on shipments stored in private warehouses because railroad warehouses unavailable and storage in appraisers' stores not permissible, found unreasonable. Reparation awarded. *American Mfg. Co. v. M. P. R. R. Co.*, 341.

Domestic rates on imported nitrate of soda from New York, N. Y., and Baltimore, Md., to East St. Louis, Ill., established pursuant to the cancellation of all import rates by the Director General under general order No. 28, found unreasonable to extent they exceeded lower domestic rate subsequently established. Reparation awarded. *Monsanto Chemical Works v. P. B. R. Co.*, 399.

Domestic rate on liquid asphalt, in tank cars, from Mereaux, La., to Milwaukee, Wis., established by the Director General on June 25, 1918, on which date all import rates were cancelled, found unreasonable to extent it exceeded lower domestic rate subsequently established when Mereaux was placed on the New Orleans rate basis. Reparation awarded. *Johns-Manville Co. v. Director General*, as Agent, 420.

Domestic rate on imported nitrate of soda from Norfolk, Va., and Baltimore, Md., to points in c. f. a. territory, established by the Director General on June 25, 1918, on which date all import rates were cancelled, found unreasonable to extent it exceeded lower domestic rate established in compliance with findings in *General Chemical Co.*, 57 I. C. C., 222, which lower rate is prescribed for the future. *King Powder Co. v. Director General*, as Agent, 459.

Domestic rates on imported nitrate of soda from New York, N. Y., and points taking same rates, and Baltimore, Md., to Sandusky, Ohio, and from Baltimore, Md., to Ivorydale, Ohio, assessed as a result of cancellation by the Director General of all import rates under general order No. 28, found unreasonable to extent they exceeded lower rates established subsequent to *General Chemical Co.*, 57 I. C. C., 222. Reparation awarded. *Jarecki Chemical Co. v. Director General*, as Agent, 692.

INBOUND AND OUTBOUND.

Rates on grain from points in Iowa, Nebraska, and Missouri, to Cairo, Ill., found not unreasonable, discriminatory, or unduly prejudicial, as substantial equalization appears to have been effected at Cairo through the medium of transit, and the Commission is not warranted in requiring carriers to reduce their inbound rates to Cairo for the purpose of equalizing that market with St. Louis, Mo., and Memphis, Tenn. *Cairo Board of Trade v. A., T. & S. F. Ry. Co.*, 219.

Where practicable, establishment of in-and-out rates is desirable in lieu of transit arrangements, but every point can not be made a rate-breaking point. *Id.* (222).

Carriers moving grain into Cairo, Ill., for transit, not justified in restricting out-bound movement to their own rails, as that point is entitled to the same advantages as St. Louis, Mo., and Memphis, Tenn., from which points grain is free to move outbound to any destination via any carrier. *Id.* (222).

INCLINE TRACKS.

Proposed cancellation by the C., C., C. & St. L. Ry. Co. of its switching charges between its incline or river track and connecting lines' tracks at Cairo, Ill., and from its track barge to connecting lines' tracks at the same place, thereby making applicable class distance rates which are higher, found not justified. Switching between Incline Tracks and Connections at Cairo, 535.

INCREASED RATES. *See* ADVANCE IN RATES.

INDIRECT ROUTE. *See* CIRCUITOUS ROUTES.

INDUSTRIAL LINES. *See also* SHORT LINES.

While there is nothing inherent in demurrage which precludes assessing it against an industrial common carrier responsible for delay in car movement who has profited by the use of the foreign car, the assessment of demurrage under the uniform code against such lines, without allowance of additional free time to cover the period actually required for service performed is clearly unreasonable. *Birmingham Southern R. R. Co. v. Director General*, as Agent, 551 (554).

Following *Industrial Railways Case*, 29 I. C. C., 212, 281, and other cited cases, allowance of switching reclaims to industrial common carriers condemned. *Id.* (555).

Principles announced in *Owasco River Ry. Case*, 53 I. C. C., 104, governing rules for car interchange arrangements between industrial common carriers and trunk line connections, and basis of settlement for accrued charges, overruled in part. *Id.* (556).

Payment of per diem reclaims to industrial railroads may result in preferences and advantages to the proprietary industries, and is not a proper basis for settlement by an industrial railway for the use or detention upon its lines of foreign cars. *Illinois Northern Ry.*, 629 (634); *Pullman R. R. Co.*, 637 (644).

INDUSTRIAL TRACKS. *See* SIDE TRACKS.

INTENTION.

Accidents of tariff publication alone should not operate to continue rates upon a basis different from that upon which they were established and intended to be maintained. Substitution for Increases in Rates, 513 (522).

INTERCHANGE OF CARS.

Principles announced in *Owasco River Ry. Case*, 58 I. O. C., 104, governing rules for car interchange arrangements between industrial common carriers and trunk line connections, and basis of settlement for accrued charges, overruled in part. *Birmingham Southern R. R. Co. v. Director General*, as Agent, 551 (556).

Carriers must observe reasonable rules and practices with respect to car service as defined in the act; however, car interchange is primarily a matter of agreement. The common-carrier status of a road gives no inherent right to per diem or reclaim. *Id.* (556).

Following *Birmingham Southern R. R. Co.*, 61 I. O. C., 551, arrangements between common-carrier short lines and their trunk-line connections with respect to use and detention of foreign cars and basis of settlement of accrued charges prescribed. *National Tube Co. v. P., C., & St. L. R. R. Co.*, 590; *Illinois Northern Ry.*, 629; *Pullman R. R. Co.*, 637.

INTERCHANGE SWITCHING. See also SWITCHING.

Increased charges proposed by the S. L.-S. F. Ry. Co. for switching between industries on its line and interchange points with other carriers at Wichita, Kans., in connection with a line-haul movement by the latter, found not justified. *Interchange Switching at Wichita*, 205.

A carrier is entitled to reasonable compensation for switching or other services, but is not justified in attempting to restrict traffic to its own lines by making an excessive charge for switching to or from its connections. The propriety of switching charges absorbed by carriers must be considered as though they were to be charged for by the railroad rendering the service and paid for by shippers. *Id.* (206).

INTERCHANGEABLE TICKETS. See COMMUTATION FARES AND TICKETS.**INCORPORATE RELATIONSHIPS.**

Allegation of inefficient management based upon fact that a close intercorporate relationship exists between two separately managed and operated carriers whose rails parallel each other and that company materials should be transported free or at reduced rates. *Held*: Following *Conference Ruling 225 (b)*, allegation not sustained. *Arizona Rates, Fares, and Charges*, 572 (582-588).

INTERMEDIATE MARKETS.

Rates on grain from points in Iowa, Nebraska, and Missouri, to Cairo, Ill., found not unreasonable, discriminatory, or unduly prejudicial, as substantial equalization appears to have been effected at Cairo through the medium of transit, and the Commission is not warranted in requiring carriers to reduce their inbound rates to Cairo for the purpose of equalizing that market with St. Louis, Mo., and Memphis, Tenn. *Cairo Board of Trade v. A., T. & S. F. Ry. Co.*, 219.

It is not sufficient to consider the rates to an intermediate market, nor alone the rates from such market if the question of discrimination between markets is to be determined, but there must be consideration of the entire rate from point of production to ultimate destination. *Id.* (220).

INTERMEDIATE POINT.

Where shipper made request for application of lower rate to an intermediate point under Rule 77 of Tariff Circular 18-A, as provided in tariff, failure of carrier to comply found in violation of tariff provision; but, since shipment was billed and moved to the farther distant point and then reconsigned to the intermediate point, combination rate legally applicable found not unreasonable or unlawful. *Red Star Yeast & Products Co. v. Director General*, as Agent, 107.

INTERMEDIATE POINT—Continued.

Demurrage accruing on cars constructively placed at points short of billed destination, following a fire at complainant's plant, found unlawful to extent that charges collected exceeded those that would have accrued had cars been delivered up to the full extent of consignee's physical capacity to receive them. Reparation awarded. *Union Bag & Paper Corp. v. Director General*, as Agent, 424.

Where cars are constructively placed at points short of billed destination, consignees operating under average agreements should be allowed credit for the time necessary to transport the cars from the point of constructive placement to point of final placement. *Id.* (427).

INTERMOUNTAIN RATES.

Rates from points east of the Rocky Mountains to intermountain territory found not unreasonable, unduly prejudicial, or otherwise unlawful as compared with rates to the Pacific coast. Plans submitted by parties proposing a system of graded rates to such territory not adopted in view of changing economic and transportation conditions and diverse opinions. *Intermediate Rate Asso. v. Director General*, 226.

INTERPLANT SWITCHING. *See* SWITCHING.

INTERVENOR.

Refund of overcharges found in original report, 58 I. C. C., 748, ordered paid to vendor, who intervened at further hearing, where it was shown that he reimbursed complainant for freight charges paid. *Ayres, Bridges & Co. v. Director General*, as Agent, 339.

INTRASTATE RATES. *See* STATE RATES.

INVESTIGATION.

Upon investigation, present rules of telegraph companies limiting their liability for negligence in the transmission or delivery, or for non-delivery, of unrepeat and repeated messages, constituting integral parts of the respective rates, found unreasonable. Reasonable maximum limitations of liability prescribed. *Limitations of Liability in Transmitting Telegrams*, 541.

ISOLATED SHIPMENT. *See* SPORADIC MOVEMENT.
ISSUE.

Attempt of line-haul carriers and belt line to force an issue as to their divisional arrangements by subjecting shippers to increased charges under schedules which limited the amount of switching charges to be absorbed, condemned by the Commission. *Swift & Co. v. Ft. W. & D. C. Ry. Co.*, 77 (79).

Where matters apparently outside of issues are presented at the hearing, and the complaint is broad enough to include them, and evidence thereon introduced without objection on part of defendants, the Commission thinks it is proper to dispose of the questions thus raised. *Railroad Commissioners of Florida v. Director General*, 438 (451).

JOINT HEARING.

As authorized by section 13, paragraph (3), of the interstate commerce act, joint hearing and conference had with certain state commissions, and agreement reached as to basis of rates to be prescribed. *Wood Rates between North Pacific Coast Points*, 159 (163).

JOINT RATES.

Proposed increase of 20 cents per net ton in the joint rates on coal from mines on the Cumberland R. R. to points on the L. & N. and connections in Tennessee, Virginia, the Carolinas, Georgia, Florida, and Alabama, found not justified. *Coal from Cumberland R. R. to Southeastern Points*, 80.

JOINT RATES—Continued.

The Commission is vested with specific authority to initiate rates that will protect revenues, and where carriers will suffer depletion of revenue by reason of the establishment of new joint rates, appropriate measures can be taken for their protection. *Intermediate Rate Asso. v. Director General*, 226 (246).

One of the duties of common carriers is to participate in such joint rates as the public interest requires. This is an incident of their public understanding and equity does not necessarily demand that they be compensated by larger divisions in instances where it might be more advantageous to confine traffic to their own lines. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (283).

Cancellation of joint rates in effect via a route which short hauled the originating carrier, leaving in effect higher combinations via that route, without a corresponding change via routes over which the originating carrier would receive the long haul, found justified. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 680 (686).

JUNK.

Rate applicable on secondhand boiler flues and tubes, billed as scrap iron, found unreasonable to extent it exceeded rate on wrought or cast iron or steel pipe, secondhand, and on new pipe and boiler flues or tubes in the reverse direction. Adjustment of undercharges directed. *Schwartz v. T. & N. O. R. R. Co.*, 20 (30).

Rate and demurrage charges applicable on oil boilers, billed as scrap iron, not found unreasonable or otherwise unlawful, as it was not shown that they were incapable of being reconditioned for use as secondhand pipe or fence posts. *Id.* (31).

Iron or steel articles which have a recognized commercial value other than that of the metal from which they are manufactured are not properly described as scrap iron. *Id.* (31).

JURISDICTION.

Intrastate shipments moving prior to the period of federal control are not within the jurisdiction of the Commission. *Sinclair Refining Co. v. Director General*, as Agent, 18.

The Commission is without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for the construction, maintenance, and use of industrial or private side tracks, limiting liability for loss and damage caused by fire from locomotives operating over such tracks. *National Industrial Traffic League v. A. & R. R. R. Co.*, 120.

Section 1 of the act clearly refers to the construction, maintenance, and operation of switch connections, and under its provisions the Commission has no authority to require a railroad to construct a private sidetrack, authority being limited to requiring a carrier to make a switch connection with a private sidetrack. *Id.* (121-122).

Claims against common carriers for loss, damage, or delay to property are governed by general legal principles, and are determinable by the courts. *Id.* (125).

The Commission is without authority to order refund of war taxes. *Daugherty & Son Refining Co. v. Director General*, as Agent, 197 (199); *Crucible Steel Co. of America v. Director General*, as Agent, 655 (656).

The Commission has little, if any power, and no inclination, to adjust rates for the purpose of retarding or promoting progress and development of a particular section of the country. *Intermediate Rate Asso. v. Director General*, 226 (248).

JURISDICTION—Continued.

The Commission is vested with specific authority to initiate rates that will protect revenues, and where carriers will suffer depletion of revenue by reason of the establishment of new joint rates, appropriate measures can be taken for their protection. *Id.* (246).

The transportation act, 1920, has removed all doubt as to the Commission's authority to prescribe for the future "just, reasonable, and equitable divisions" of joint rates, fares, or charges. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (274).

Under the interstate commerce act prior to its amendment by the transportation act, 1920, the Commission could require the adjustment of divisions prior to filing of complaint, but under paragraph (6), which was added to section 15 by the transportation act, it can require adjustment of divisions only from the time the complaint was filed. *Id.* (275-276).

Jurisdiction may be taken away by repeal of the statutes conferring it by necessary implication as well as by express words, but if a statute giving a special remedy is repealed without a saving clause in favor of pending suits, all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect, it can not be after, and if a law conferring jurisdiction is repealed without any reservation as to pending cases, all such cases fall with the law. *Id.* (276).

The Commission can only act under the jurisdiction conferred upon it by the Congress, and must exercise powers which it now has, subject to limitations which now attach to them, as its jurisdiction and powers are drawn from the statute as it is now. *Id.* (276).

A statutory right is to be distinguished from the remedy for its enforcement, but whether the transportation act has taken away a remedy and thereby indirectly destroyed a right of complainants who sought the adjustment of divisions for a period prior to the filing of complaint is not for the Commission to decide. *Id.* (276).

It was to avoid the unduly prejudicial effect of strategic advantages upon the weaker carriers and the resulting impairment of transportation facilities that the Commission's powers over divisions were clarified and strengthened, and it is not prevented by paragraph (6) of section 15 of the act from taking into consideration any circumstances and conditions which have weight in measuring the justice and reasonableness of divisions. *Id.* (283).

Where a transportation service has been rendered for which no tariff authority existed and shipper has paid the sum demanded by the carrier for that service, the Commission may determine what would have been a reasonable charge and order repayment of the excess, if any. *Gateway Produce Co. v. American Ry. Exp. Co.*, 347 (348-349).

Where issue of undue or unreasonable advantage, preference, or prejudice is not involved in the proceeding, the Commission's jurisdiction to make a finding for the future as to state rates is confined to the period of federal control which terminated March 1, 1920. *Cairo Board of Trade v. A., T. & S. F. Ry. Co.*, 219 (222); *Barrett Co. v. Director General*, as Agent, 401 (402).

JURISDICTION—Continued.

The Commission's power under section 15 of act is to fix the maximum to be paid as an allowance, and in the exercise of this power it may not require a carrier to make an allowance or fix the precise amount; and it is doubtful whether damages can be awarded for failure to pay except in cases where the allowance is published in the carrier's tariffs and is not more than reasonable for the service. *Rutherford-Brede Co. v. Director General*, as Agent, 515 (517).

The Commission's jurisdiction over intrastate rates is limited to cases falling within the provisions of section 206 (c) of the transportation act, 1920. *Barnett Oil & Gas Co. v. Director General*, as Agent, 568 (569); *Prince-Johnson Limestone Co. v. Director General*, as Agent, 602.

Under the amended fourth section the Commission has no authority to authorize a lower charge from farther distant competitive points than from intermediate points where the haul from the intermediate points is not longer than that of the direct line or route from the farther distant competitive points. *Buckeye Veneer Co. v. Director General*, as Agent, 678 (675).

Under section 1 of the act the Commission's jurisdiction over rates from an adjacent foreign country to points within the United States is limited to that portion of the haul which takes place within the United States. *Lake Superior Paper Co. (Ltd.) v. Director General*, 709 (713).

Movements between complainant's plants, located in the same city, found to be intrastate traffic and subject to the Commission's jurisdiction under section 206 (c) of the transportation act, 1920, because invoked by "prayer for reparation account of damages caused by collection or enforcement by or through the President during federal control of charges (including those applicable to intrastate traffic), which were unjust, unreasonable. * * *." *Crucible Steel Co. of America v. Director General*, as Agent, 758 (754).

KANSAS CITY SWITCHING DISTRICT.

Rates on crushed rock from Leeds, Mo., and Rosedale, Kans., points located outside the Kansas City switching district, to destinations within a radius of 150 miles from Kansas City, Mo., on lines of defendants other than originating carriers, found not unduly prejudicial but unreasonable to extent they exceed by more than 1 cent the rates from Kansas City to same destinations. Measure of reasonable rates prescribed and reparation denied. *Prince-Johnson Limestone Co. v. Director General*, as Agent, 602.

LAKE-AND-RAIL.

Aggregate charges on butter, other dairy products, dressed poultry, and eggs, moving lake and rail from Duluth, Minn., to eastern destinations, comprising the joint third-class rates and separately established refrigeration charge during the lake movement, Duluth to Buffalo, N. Y., found not unreasonable, as the service is superior and the total charges substantially less than via all rail. *Bridgeman-Russell Co. v. G. L. T. Corp.*, 280.

LAKE CARGO COAL.

Rates on bituminous coal from the "inner crescent" group of mines on the L. & N. R. R., in Kentucky, to Toledo, Ohio, for transshipment by lake, increased after termination of federal control and subsequently restored to their former level, found not unreasonable. *Harlan County Coal Assn. v. L. & N. R. R. Co.*, 394.

LEASES. *See* CONTRACTS.

LEGAL RATES. *See also* OVERCHARGES.

Shipments originated on rails of carriers publishing rates higher than when originating on the line of delivering carrier specified in bill of lading, whose rails also reached point of origin. Complainant asks that lower rates named in tariff of terminal carrier be applied on traffic originating on such other lines, but since carriers on whose lines shipments originated concurred in tariff naming lower rates on traffic to, via, but not from points on the concurring line, rates charged found legally applicable. *Lieberman Iron Co. v. Director General*, 21.

Interstate shippers are liable to pay the rate fixed by the printed and published schedules of carriers on file with the Commission. *Id.* (22). Where shipper made request for application of lower rate to an intermediate point under Rule 77 of Tariff Circular 18-A, as provided in tariff, failure of carrier to comply found in violation of tariff provision, but since shipment was billed and moved to the farther distant point and then reconsigned to the intermediate point, combination rate legally applicable found not unreasonable or unlawful. *Red Star Yeast & Products Co. v. Director General*, as Agent, 107.

Where a transportation service has been rendered for which no tariff authority existed and shipper has paid the sum demanded by the carrier for that service, the Commission may determine what would have been a reasonable charge and order repayment of the excess, if any. *Gateway Produce Co. v. American Ry. Exp. Co.*, 347 (348-349).

Requirement of adherence to established rates and charges, as provided in the act, applies as strictly to telegraph companies as to other common carriers. *Limitations of Liability in Transmitting Telegrams*, 541 (545).

LESS-THAN-CARLOAD. *See also* ANY-QUANTITY RATES; CARLOAD AND LESS-THAN-CARLOAD:

Contention that unreasonable charges resulted because allowance made complainant for furnishing ice and salt on l. c. l. shipments of dressed poultry, butter, eggs, and cheese was less than defendant's charge for furnishing the same, *Held*: Not sustained, as no evidence of record that through charges, less allowance for ice and salt furnished, were unjust or unreasonable for service performed. *Swift & Co. v. Director General*, as Agent, 183.

Proposed increased joint minimum rates and charges on l. c. l. shipments and new individual and joint regulations and practices affecting such rates and charges found not justified where the matter was mainly a question of divisions and of the method of rate making. *Minimum Charges on Less-than-Carload Shipments*, 727.

LIABILITY. *See* LIMITATION OF LIABILITY.

LIKE KINDS OF TRAFFIC. *See also* COMPARATIVE RATES.

Chassis parts of passenger and freight automobiles are a like kind of traffic within the meaning of section 2 of the act. *Anthony v. Director General*, as Agent, 366 (367-368).

LIMITATION OF ACTION.

Excluding period of federal control as part of the period in limitation of claims for reparation for causes of action arising prior thereto, as provided under section 206 (f) of the transportation act, 1920, claim for reparation found to have been filed within two years and not barred. *Hirth-Krause Co. v. Director General*, as Agent, 350.

LIMITATION OF LIABILITY. *See also CUMMINS AMENDMENT.*

The Commission is without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for the construction, maintenance, and use of industrial or private side tracks, limiting liability for loss and damage caused by fire from locomotives operating over such tracks. *National Industrial Traffic League v. A. & R. R. Co.*, 120.

Liability clauses contained in contracts or agreements for maintenance, use, and operation of industrial side tracks do not involve the question of rates nor the matter of facilities to be furnished by the railroad company for the transportation of property under its obligation as a common carrier. *Id.* (123).

Upon investigation, present rules of telegraph companies limiting their liability for negligence in the transmission or delivery, or for nondelivery, of unrepeatd and repeated messages, constituting integral parts of the respective rates, found unreasonable. Reasonable maximum limitations of liability prescribed. *Limitations of Liability in Transmitting Telegrams*, 541.

A telegraph company, as a common carrier, may lawfully undertake by contract, rule, regulation, or in any manner to exempt itself from full liability for errors or delays in transmission of messages. *Primrose Case*, 154 U. S., 1, and *Postal Telegraph Cable Co. Case*, 251 U. S., 27. *Id.* (545).

Policy of the Western Union Telegraph Co., when a default occurs in connection with a message for which it charged the unrepeatd rate, to assume liability in excess of its legal liability, on the grounds of business policy, equity, and fair dealing, found to be a plain departure from its published rules and stands on the same footing as an unlawful rebate. *Id.* (546).

All other common carriers subject to the act have been made fully liable for their errors or negligence, notwithstanding attempted limitations by contracts, rules, or otherwise, and there is no sound reason why telegraph companies should longer be permitted to avoid liability for their errors or negligence or to limit it to the nominal amounts now provided for in their rules. *Id.* (549).

Provision should be made in rules of telegraph companies for the transmission of valued messages under a liability limited to the value stated in writing by the sender at the time they are offered for transmission upon payment of the repeated rate plus one-tenth of 1 per cent of the stated value in excess of \$5,000. *Id.* (550).

LINE HAUL.

Where shipper's direction in bills of lading specifies routing of shipments via a particular line, such instructions authorize movement over a route which would afford that road a line haul. *United Paperboard Co. (Inc.) v. M. & E. R. R. Co.*, 483 (484).

LINE-HAUL RATES.

Legally applicable line-haul rate charged on iron ore, moving during federal control from Pohatcong R. R. interchange tracks near Oxford Furnace, N. J., to Oxford Furnace, found unreasonable to extent it exceeded switching charge subsequently established. *Pequest Co. v. Director General*, as Agent, 16.

LOADING.

Where impossible to load the minimum in a few of the cars used, it does not necessarily follow that the minimum was unreasonable. *Briggs & Turivas v. Director General*, as Agent, 363 (864).

LOADING—Continued.

Minimum applicable on steel turnings moving in open-top cars at a time when such equipment was being utilized to fullest extent for transportation of coal to fill a national emergency found not unreasonable. Complainant refused to accept box cars and did not in all instances load to level full, while other shippers exceeded the minimum by building up the sides of such open cars. *Id.* (364).

Average loading capacity of bunkers of Fruit Growers Express cars as a whole found not in excess of 9,200 pounds per car, and under methods of loading prevailing in southern territory average amount of ice used in full-tank loading of empty bunkers found to be substantially less and does not exceed 8,500 pounds. *Railroad Commissioners of Florida v. Director General*, 438 (451).

LOADING AND UNLOADING.

Shippers are entitled to a reasonable free time for loading or unloading cars, and the principle has long been recognized that demurrage should not be imposed for delays occasioned by weather interference. *Virginia Iron, Coal & Coke Co. v. Director General*, as Agent, 200 (201).

Based upon the costs accruing from the time the engine and crew are placed at the disposal of the shipper, charges for special locomotive and train service required in loading logs along carrier's right of way not found unreasonable. *National Box Co. v. M. P. R. R. Co.*, 211.

Based upon cost of performing the service, proposed increased charges for loading and unloading ordinary live stock at public stockyards at Chicago, Ill., and other western points, and absorptions of such charges by carriers engaged in the transportation, found justified. *Live Stock Loading and Unloading Charges*, 223.

LOCAL RATES. *See* COMBINATION RATES.

LOCATION.

The Commission may not require carriers to equalize natural advantages, such as location and cost of production. *United Iron Works Co. v. Director General*, as Agent, 33 (35).

Where producers must bring their products to railroads by dray or boats involving extra costs, such expenses are a part of the costs of production and the Commission may not properly make them a basis for readjusting rates. *Salt from Utah to San Francisco*, 58 (59).

LONG AND SHORT HAUL. *See also* SECTION 4.

In General:

Carriers having indirect routes authorized to maintain higher rates at intermediate points, provided they do not exceed rates for equal distances to or from competitive points via direct lines. *South Bend Chamber of Commerce v. Director General*, 67 (72).

Under the amended fourth section the Commission has no authority to authorize a lower charge from farther distant competitive points than from intermediate points where the haul from the intermediate points is not longer than that of the direct line or route from the farther distant competitive points. *Buckeye Veneer Co. v. Director General*, as Agent, 673 (675).

When a fourth section departure is protected by an appropriate application, no damage can be awarded up to the time when the Commission passes upon the fourth section application unless a case of undue prejudice is made out which might carry with it an award of damages or unless the rate charged from the intermediate point is found unreasonable. *Id.* (676).

LONG AND SHORT HAUL—Continued.**In General—Continued.**

It is the Commission's practice in according fourth section relief to circuitous lines to confine it to those the length of which exceeds that of the direct line by 15 per cent or more. *Procter & Gamble Distributing Co. v. A. C. Ry.*, 700 (708).

Cushing and Okmulgee, Okla.: Authority to charge on wrought-iron pipe from Kansas City, Mo., and other points in Kansas City territory to Graford, Tex., rates which are lower than on like traffic from Cushing and other intermediate points; also to continue to charge rates on iron pipe fittings from Kansas City and St. Louis, Mo., Peoria and Chicago, Ill., to Houston, Galveston, and other Texas points, which are lower than on like traffic from and to Okmulgee and other intermediate points, denied. *United Iron Works v. Director General*, as Agent, 33 (34, 38, 41).

Huntingburg, Ind.: Authority to charge rates on lumber from Belleville, Centralia, Fairfield, and Mount Carmel, Ill., to Dayton, Ohio, which are lower than from Huntingburg and other intermediate points, denied. *Buckeye Veneer Co. v. Director General*, as Agent, 673 (676).

Knoxville, Tenn.: Authority to charge rates on Epsom salts from Atlanta, Ga., to Cincinnati, Ohio, which are lower than on like traffic to Knoxville and other intermediate points, denied. *Davis Mfg. Co. v. Director General*, as Agent, 607 (609).

Louisville, Ky.: Application for authority to charge rates on cotton linters from St. Louis, Mo., to Atlanta, Ga., lower than from Louisville and other intermediate points, denied. *Speir & McKay v. Director General*, as Agent, 736 (737).

Petrolia, Pa.: Application for authority to charge rates on petrolatum from Oil City, Pa., to Memphis, Tenn., lower than from Petrolia and other intermediate points, denied. *Daugherty & Son Refining Co. v. Director General*, as Agent, 197 (199).

LOSS AND DAMAGE.

The Commission is without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for the construction, maintenance, and use of industrial or private side tracks, limiting liability for loss and damage caused by fire from locomotives operating over such tracks. *National Industrial Traffic League v. A. & R. R. R. Co.*, 120.

Claims against common carriers for loss, damage, or delay to property are governed by general legal principles and are determinable by the courts. *Id.* (125).

McKEESPORT CONNECTING RAILROAD.

History and description of. *National Tube Co. v. P., C., C. & St. L. R. R. Co.*, 590 (593).

Found to be a common carrier subject to the act. *Id.* (599).

MARKET COMPETITION. See COMPETITION.**MARKETS. See INTERMEDIATE MARKETS.****MEASURE OF RATE.**

While divisions may be considered as evidence, they are not conclusive and ordinarily do not afford a sound basis upon which to judge the reasonableness of rates. *American Creosoting Co. v. Director General*, 145 (151).

Prosperity of a carrier does not indicate that rates on a particular commodity are unreasonable or contribute to undue profits. *Bridgeman-Russell Co. v. G. L. T. Corp.*, 260 (267).

MEASURE OF RATE—Continued.

The reasonableness of increases actually applied by the railroads to combination rates can not be determined entirely by a construction of general order No. 28, but "the controlling question is whether the resulting rates were unreasonable or otherwise unlawful." *Abbott v. Director General*, as Agent, 296 (299).

When cost figures are used in determining the reasonableness of rates and are the result of painstaking efforts to arrive at just and reasonable results, such figures are not to be disregarded because they may not be correct in every detail and are based in part on estimates. *Switching and Absorption at Minneapolis*, 646 (652).

MERCER VALLEY RAILROAD.

History and description of. *National Tube Co. v. P., C., C. & St. L. R. R. Co.*, 590 (595-598).

Found not to be a common carrier subject to the act and its demurrage tariffs filed with the Commission are without force and effect. *Id.* (598).

MESSAGES. See TRANSMISSION OF INTELLIGENCE.**MILEAGE RATES. See DISTANCE RATES.****MINIMUM CHARGE.**

Where complainant performed practically all terminal service in connection with, and furnished all cars for, the transportation of intrastate shipments of wet marl, minimum charge of \$15 per car assessed after June 25, 1918, under general order No. 28, found unreasonable to extent it exceeded \$7.50 per car. Reparation awarded. *Peerless Portland Cement Co. v. Director General*, as Agent, 160.

Minimum charge of \$15 per car established by the Director General on June 25, 1918, and assessed on wet phosphate rock, moving during federal control, from Alafia, Fla., to Agricola, Fla., found unreasonable to extent it exceeded 20 cents per long ton, minimum marked capacity of car, subsequently established. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 751.

MINIMUM WEIGHT. See also WEIGHT.**In General:**

Where impossible to load the minimum in a few of the cars used, it does not necessarily follow that the minimum was unreasonable. *Briggs & Turivas v. Director General*, as Agent, 363 (364).

Fact that one point has a higher minimum than another does not of itself constitute undue preference within the meaning of the act. *Id.* (365).

Steel turnings: Minimum applicable on, not found unreasonable as compared with minimum on scrap iron and steel. *Briggs & Turivas v. Director General*, as Agent, 363.

MISQUOTATION OF RATE.

Misquotation of a rate by a carrier does not of itself afford a basis for an award of reparation. *Taylor v. Director General*, as Agent, 109 (110).

MISROUTING.

Rate and route inserted by shipper in bill of lading did not coincide. Initial carrier's agent failed to ascertain from shipper before forwarding whether instructions as to rate or route should govern. *Held*: Following *Conf. Ruling 474 (c)*, shipments misrouted. Reparation awarded. *Mulkey Salt Co. v. Director General*, as Agent, 689.

MISSISSIPPI RIVER CROSSINGS. *See also RIVER CROSSINGS.*

Rates between St. Louis, Mo., and points in Illinois and Indiana properly may be higher than those between East St. Louis, Ill., and the same points because of the additional service required in crossing the Mississippi River. Grain from St. Louis to Cincinnati and Louisville, 256 (258).

MIXED CARLOADS.

Proposed cancellation of commodity rates on lithopone and zinc oxide from Mineral Point, Wis., to St. Paul and Minneapolis, Minn., and Kansas City, Mo., leaving in effect higher fifth-class rates, found not justified, as no reason appears why the mixed carload commodity rate should be continued to St. Louis, Mo., and not to Kansas City. Lithopone and Zinc Oxide between Western Points, 208.

Proposed cancellation of commodity rates on lithopone and certain other commodities between St. Louis, Mo., Peoria and Chicago, Ill., and Mississippi River crossings, on the one hand, and Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak., on the other, leaving in effect fifth-class rates, found justified, as the proposed cancellation will not increase the rates or minimum weights on such mixed c. l. shipments. *Id.* (210).

Rates legally applicable on mixed carload of freight and passenger automobile chassis parts found not unreasonable but unjustly discriminatory and unduly prejudicial to extent they exceed the rate on freight automobile chassis parts. *Anthony v. Director General*, as Agent, 366.

Commodity rates on fresh fruits and vegetables from Los Angeles and San Francisco, Calif., to Bisbee and Douglas, Ariz., found unreasonable to extent they exceeded class C rates contemporaneously in effect. Reasonable maximum rates prescribed and reparation awarded. *Buxton-Smith Co. v. Director General*, as Agent, 623.

NONCOMPENSATORY RATES.

Respondent sought to justify increased rail-and-water class and commodity rates upon claim that it is operating at a loss under present rates and that if proposed increases are not permitted to become effective it will be compelled to discontinue operation. Rates between Ohio River and Cumberland River Points, 10.

NOTICE.

Consignee failed to unload ore frozen in transit within prescribed free time. Tariff provided that written statement be served upon carrier's agent within free time that lading was frozen upon arrival. Verbal notice given carrier's employee within 48 hours after placement, and since defendant actually knew that frozen condition of ore precluded unloading, demurrage charges assessed found unreasonable. Reparation awarded. *Virginia Iron, Coal & Coke Co. v. Director General*, as Agent, 200.

When a shipment is tendered for delivery in a frozen condition, and for that reason can not be unloaded within the prescribed free time, it is not unreasonable to require that due notice to that effect be given in order that the carrier may have the necessary information upon which to base demurrage charges and be afforded opportunity to take proper steps to expedite unloading. *Id.* (201).

A notice in writing is highly desirable as evidence of the fact that notice was given, and tends to promote the orderly conduct of business and prevent unlawful concessions and discriminations that would result from a lax enforcement of the "weather" rule. *Id.* (201).

NOTICE OF ARRIVAL.

Tariff provided that "Notice shall be sent or given consignee in writing, or as otherwise agreed to," but made no provision for notice to consignor when shipment refused at destination. Order-notify consignee notified by telephone and in person and when it became apparent that he was not going to accept shipment consignor was notified by letter and disposition orders were given. Demurrage accruing found lawfully assessed. *Hewitt-Lea-Funk Co. v. Director General, as Agent, 49.*

OPPOSITE DIRECTION. *See BOTH DIRECTIONS.*

OPTION. *See ALTERNATIVE.*

ORDER NOTIFY.

Tariff provided that "Notice shall be sent or given consignee in writing, or as otherwise agreed to," but made no provision for notice to consignor when shipment refused at destination. Order-notify consignee notified by telephone and in person and when it became apparent that he was not going to accept shipment consignor was notified by letter and disposition orders were given. Demurrage accruing found lawfully assessed. *Hewitt-Lea-Funk Co. v. Director General, as Agent, 49.*

So long as the handling of order-notify shipments held for surrender of the bill of lading or of shipments placed for inspection is, to all practical intents and purposes, identical with that of other shipments held and reconsigned within switching limits before placement, dissimilarity of service can not be invoked to justify the application of different rules and charges. *Diversion and Reconsignment Rules, 385 (890).*

Tariff rule under which order-notify shipments placed for inspection upon request of consignees or in conformity with billing instructions, and which require a subsequent movement, are subject to the same rule and charges as "straight" consignments placed for inspection, found justified. *Id. (389).*

The holding of order-notify shipments at destination for surrender of the bill of lading before placement properly is, always has been, and necessarily will continue to be inseparable from the transportation of every shipment consigned to the shipper's order. *Id. (390-391).*

To accord to order-notify shippers a free transportation service that is not required by most others and that is so nearly akin to reconsignment, for which latter service a charge is made, would be an undue preference to that particular class of shippers and traffic. *Id. (391).*

OUT-OF-LINE HAUL.

Proposed tariff rule governing reconsignment or diversion before and after placement, where back-haul or out-of-line movements involved, found not justified in so far as it fails to provide for the exception covering shipments placed on public delivery tracks. *Diversion and Reconsignment Rules, 385 (388-389).*

OVERCHARGES. *See also LEGAL RATES.*

Refund of overcharges found in original report, 58 I. C. C., 748, ordered paid to vendor, who intervened at further hearing, where it was shown that he reimbursed complainant for freight charges paid. *Ayres, Bridges & Co. v. Director General, as Agent, 339.*

PACKING.

Rates on solidified soya-bean and peanut oil, in bags, found unreasonable to extent they exceeded lower rates on the same commodity when in barrels. Reparation awarded. *Swift & Co. v. Director General, as Agent, 457.*

PAPER RATES.

Respondents sought to justify the cancellation of rates on certain commodities on ground that upon investigation of their records for about one year it developed that there were no c. l. movements. *Held*: Proposed cancellation not justified. Rates Between Ohio River and Cumberland River Points, 10 (15).

PARITY OF RATES.

Proposed increase of 0.5 cent per 100 pounds in commodity rates on fresh meats and dressed poultry from Cairo, Ill., and Ohio River crossings to destinations in the southeast for purpose of placing rates through those points on a parity with the rates through Memphis, Tenn., which relationship had existed for many years, found not justified. Fresh Meats and Dressed Poultry from Ohio River, 610.

PARLOR CARS. *See* PULLMAN SERVICE.PARTIES. *See also* INTERVENORS.

The matter of according transit at a certain point should not be regarded from the standpoint alone of one carrier in the through route, but from the standpoint of all the carriers comprising the through route. Southern Hardwood Traffic Asso. v. Director General, 182 (142).

Where Director General not made a party defendant shipments made during period of federal control will not be considered. Berry Bros. (Inc.) v. C. & N. W. Ry. Co., 405.

PASSENGER FARES. *See also* COMMUTATION FARES AND TICKETS.

Upon further hearing original report 60 I. C. C., 61, intrastate passenger fares and excess baggage charges in the State of Montana, of the Butte, Anaconda & Pacific Ry. Co., an electric line, lower than the corresponding interstate fares and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Montana Rates and Fares, 500.

Intrastate passenger fares required by state authority to be maintained within the state, lower than the corresponding interstate fares and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. North Dakota Rates, Fares, and Charges, 504; Arizona Rates, Fares, and Charges, 572.

PENALTY.

The primary purpose of imposing demurrage is to promote the prompt movement of cars in the public interest. Failure to release cars within a reasonable time is a wrong against other shippers desiring to use them and against the general public, which can to a large extent be avoided by the enforcement of appropriate demurrage rules and penalties. Virginia Iron, Coal & Coke Co. v. Director General, as Agent, 200 (201).

PENDING COMPLAINTS.

Jurisdiction may be taken away by repeal of the statutes conferring it by necessary implication as well as by express words; but if a statute giving a special remedy is repealed without a saving clause in favor of pending suits all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect, it can not be after, and if a law conferring jurisdiction is repealed without any reservation as to pending cases all such cases fall with the law. P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 272 (276).

61 I. C. C.

PER CAR CHARGES. *See* MINIMUM CHARGE.

PER DIEM RECLAIM. *See* RECLAIM.

PERCENTAGE RATES.

It can not be said that a commodity rate must bear a fixed relation to the corresponding class rate, even as between competing points. *Quinton Spelter Co. v. Ft. S. & W. R. R. Co.*, 43 (44).

In original report, 57 I. C. C., 215, the Commission prescribed reasonable basis for the removal of relatively unreasonable and unduly prejudicial class and commodity rates between South Bend, Mishawaka, Elkhart, Goshen, Nappanee, and Michigan City, Ind., and points in eastern trunk line and New England territories. Upon further hearing original report modified by eliminating Holland, Mich., from, and including Watervliet, Mich., in, the 94 per cent group. Findings in all other respects affirmed. South Bend Chamber of Commerce *v.* Director General, 67.

Following *Union Sulphur Co.*, 39 I. C. C., 849, and *Du Pont de Nemours & Co.*, 60 I. C. C., 221, rate on crude sulphur (brimstone) from Canton docks, Baltimore, Md., to Gibbstown and Carneys Point, N. J., found unreasonable to extent it exceeded 80 per cent of the sixth-class rate in effect from and to the same points. Reparation awarded and measure of reasonable maximum rate prescribed. *Du Pont de Nemours & Co. v.* Director General, as Agent, 605.

Sixth-class rates on roofing and paving tars and pitches and fuel pitch in official classification territory found unreasonable to extent they exceed 80 per cent of sixth class, except between New England and trunk line territories, where the greater part of the hauls is within New England, and locally in New England territory, for which sixth class found reasonable. Reparation denied. *Watson Co. v. Director General*, as Agent, 719.

PERISHABLE FREIGHT.

Proposed rules and charges governing diversion and reconsignment of fruits and vegetables found inadvisable for application under present conditions. Diversion and Reconsignment Rules, 385 (387).

Charges on citrus fruits and vegetables from Florida found not unreasonable in the aggregate, but refrigeration charges in so far as they are based on an excessive quantity of ice, and line-haul charges on vegetables, except celery, under refrigeration, in that they do not provide, in those instances where a lower minimum and higher rate apply when under ventilation, for the alternative application of the same rate and minimum as under ventilation, found unreasonable. Railroad Commissioners of Florida *v.* Director General, 438.

PERMIT.

Demurrage charges accruing while shipper was endeavoring to obtain necessary permit to have shipments reconsigned to embargoed points found not unreasonable or unlawful as tariffs of carriers specifically prohibited reconsignment to embargoed points. *Maguire & Co. v.* Director General, as Agent, 658.

PITTSBURGH BASE PRICE.

Iron pipe is bought and sold on the Pittsburgh basis, i. e., the price at Pittsburgh plus freight from Pittsburgh to point of delivery, regardless of the point from which shipped. Iron Poles, Pipes, and Connections, 530 (533).

PLACEMENT. *See* CONSTRUCTIVE PLACEMENT; DELIVERY; SPOTTING CARS.

61 I. C. C.

PLANT FACILITY.

Cancellation by trunk line, following *Industrial Railways Case*, 29 I. C. C., 212, of allowance formerly paid complainant or its plant facility, the Culver & Port Clinton R. R., for switching cars from its plant at Culver, Ohio, while performing a similar service for competitors without charge, found not unreasonable or unduly prejudicial, as it has not been possible for trunk line to perform the service and circumstances and conditions at complainant's plant are different from those obtaining at plants of competitors. *United States Gypsum Co. v. C. & P. C. R. R. Co.*, 117.

PLEADING AND PRACTICE.

Where Director General not made a party defendant, shipments made during period of federal control will not be considered. *Berry Bros. (Inc.) v. C. & N. W. Ry. Co.*, 405.

Where matters apparently outside of issues are presented at the hearing, and the complaint is broad enough to include them, and evidence thereon introduced without objection on part of defendants, the Commission thinks it is proper to dispose of the questions thus raised. *Railroad Commissioners of Florida v. Director General*, 488 (451).

It is the Commission's practice in according fourth section relief to circuitous lines to confine it to those the length of which exceeds that of the direct line by 15 per cent or more. *Procter & Gamble Distributing Co. v. A. C. Ry.*, 700 (706).

POOLING.

Demurrage charges constitute a portion of the earnings of carriers, and it may well be that a contract or agreement under which credits earned at a particular point or industry on the traffic of one carrier might be used to offset debits incurred in connection with traffic of another is within the spirit of the inhibition of the antipooling provision of section 5 of the act. *Penick & Ford (Ltd.) v. Director General*, 173 (176).

POSTING. See **FILING AND POSTING.**

POWER OF COMMISSION. See **JURISDICTION.**

PRACTICE. See **PLEADING AND PRACTICE.**

PREFERENCES AND PREJUDICES. See also **DISCRIMINATION.**

In General:

Undue prejudice predicated on a disparity of rates to a common destination from two competing originating points served by different railroads, found not sustained, as it is a well-established principle that undue prejudice or preference may not be said to exist as between shippers or communities unless the same carrier serves them or participates in their traffic and the transportation conditions are shown to be substantially similar. *Stone Products Co. v. Director General*, as Agent, 51.

Whether undue or unreasonable preference or advantage exists in a particular case is a question of fact, and it does not follow as a matter of law that practices are unduly prejudicial because they are not uniformly the same in all parts of the country and as to all shippers. *National Industrial Traffic League v. A. & R. R. R. Co.*, 120 (128).

Contention of undue prejudice not sustained where there is no competitive relationship between the respective commodities. *Southern Hardwood Traffic Asso. v. Director General*, 132 (142); *American Creosoting Co. v. Director General*, 145 (151).

PREFERENCES AND PREJUDICES—Continued.

In General—Continued.

Whether rates from points located on short lines are unduly prejudicial is not controlled by whether or not a mill is located at the junction point. The inhibition of section 8 of the act against undue prejudice applies to localities as well as to shippers at those localities. *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 108 (414).

Articles:

Automobile parts: Rates legally applicable on mixed carloads of freight and passenger automobile chassis parts found not unreasonable but unjustly discriminatory and unduly prejudicial to extent they exceed the rate on freight automobile chassis parts. *Anthony v. Director General*, as Agent, 366.

Oil, coconut: Upon further hearing, original report 56 I. C. C., 263, rate on, in tank-car loads, found unduly prejudicial to extent it exceeded the rate on cottonseed oil, in tank-car loads. *Southern Cotton Oil Co. v. Director General*, 454.

Press cloth, hair and wool: First-class any-quantity rates on, from certain north Atlantic ports, and related points to points in Texas and the southeast; from Houston, Tex., to points in the southeast; and between points in the southeast, not found unreasonable or unduly prejudicial when applied to l. c. l. shipments, or as compared with lower rating on cotton press cloth, but found unreasonable when applied to c. l. shipments. Reasonable maximum c. l. rates prescribed. *Interstate Cotton Seed Crushers' Asso. v. Director General*, 1.

Car Distribution: Practice of defendant in the distribution of cars for grain loading, by according complainant's competitors at Roosevelt, Mountain Park, and Snyder, Okla., a larger proportion of cars than was furnished complainant at Cold Springs, Okla., found to have resulted in undue prejudice. Record held open on question of damages. *Hobart Mill & Elevator Co. v. Director General*, 192.

Localities:

Autaugaville, Ala.: Upon further hearing, former report 53 I. C. C., 278, rates on pine lumber from Autaugaville to interstate destinations found not unreasonable, but maintenance of higher rates from Autaugaville than the group rate from Booth, Ala., the junction between the Alabama Central and the Mobile & Ohio railways, found unduly prejudicial. Reparation denied. *Whitewater Lumber Co. v. A. C. Ry.*, 563.

Florida points: Rates on rosin and turpentine from Perry, Athena, Carbur, and Salem, Fla., to Chicago, St. Paul, Minneapolis, and other points in Illinois, Wisconsin, Minnesota, Iowa, and states west thereof, found unduly prejudicial to extent they exceed rates from Jacksonville, Fla., by more than 3 cents on rosin and 6 cents on turpentine. Reparation denied. *Barber Co. v. Director General*, as Agent, 28.

Great Falls, Mont.: Rates on brick (except bath or enamel), hollow building tile, and fire clay, in straight or mixed carloads, from, to certain points in Wyoming, found unreasonable and unduly prejudicial to extent they exceed certain differentials under the rates from Denver, Colo. Reasonable and nonprejudicial relationship prescribed. *Great Falls Brick & Tile Co. v. Director General*, 178.

61 I. C. C.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Intermountain territory: Rates from points east of the Rocky Mountains to, found not unreasonable, unduly prejudicial, or otherwise unlawful as compared with rates to the Pacific coast. Plans submitted by parties proposing a system of graded rates to such territory not adopted in view of changing economic and transportation conditions and diverse opinions. *Intermediate Rate Asso. v. Director General*, 228.

Knox, Miss.: Rates on yellow-pine lumber, timber, and lumber products from Knox, a local point on the Fernwood, Columbia & Gulf R. R., found not unreasonable, but unduly prejudicial to extent they exceeded and exceed the blanket basis of rates applicable from the same junction of that carrier with the Illinois Central. Reparation denied. *Swift Lumber Co. v. F. & G. R. R. Co.*, 485.

Knoxville, Tenn.:

Rate on sulphur from Sulphur Mines, La., to, via Memphis, Tenn., found not unduly prejudicial as compared with rates to Nashville and Chattanooga, Tenn., via the same route, but via New Orleans, La., found unduly prejudicial to Knoxville. *Davis Mfg. Co. v. Director General*, as Agent, 345.

Rate on epsom salts, in barrels, from Atlanta, Ga., to, found unreasonable and unduly prejudicial as compared with rates to Memphis and Nashville, Tenn., Louisville and Lexington, Ky., and Cincinnati, Ohio, farther distant competitive points. Reasonable maximum rate prescribed and reparation awarded. *Davis Mfg. Co. v. Director General*, as Agent, 607.

La Crosse, Wis.: To effectuate the relative adjustment of class rates prescribed in *Wisconsin Rate Cases*, 44 I. C. C., 602, from eastern points to La Crosse, on the one hand, and Dubuque, Iowa, St. Paul, Minn., and Chicago, Ill., on the other, disrupted by various increases permitted since that decision, present class rates to La Crosse found unreasonable and unduly prejudicial and reasonable and nonprejudicial rates prescribed. *La Crosse Chamber of Commerce v. A. A. R. R. Co.*, 289.

Mason City, Iowa: Rates on cement from, to points in North Dakota and northern Minnesota found unreasonable and unduly prejudicial to Mason City as compared with rates from Duluth (Steeltown), Minn., to the same points. Reasonable and nonprejudicial rates prescribed. *Lehigh Portland Cement Co. v. Director General*, 613.

Memphis, Tenn., and Louisville, Ky.: Defendants' participation in tariffs carrying joint rates on lumber and forest products and permitting under such rates transit at various points, while denying similar transit upon the same through routes at Memphis and Louisville, found to result in undue prejudice and disadvantage. *Southern Hardwood Traffic Asso. v. Director General*, 132.

Minnesota and Wisconsin points: Relationship of rates on potatoes from points in Minnesota and Wisconsin, within the Princeton group, to destinations in trunk line territory, found unduly prejudicial to shippers at those points and unduly preferential of shippers located at other Wisconsin points to extent that the rates from the Princeton group points exceed those from the other Wisconsin points by more than 8 cents per 100 pounds. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 680 (683).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Newark, N. J.: Following *Southern Hardwood Traffic Assn.*, 61 I. C. C., 132, defendants' participation in tariffs carrying joint rates on lumber and permitting under such rates creosoting in transit at various points, while denying similar transit upon the same through routes at Newark, N. J., found to result in undue prejudice and disadvantage. *American Creosoting Co. v. Director General*, 145.

Norfolk, Va.: Rates on final or blackstrap molasses, in tank-car loads, from New York, N. Y., and Philadelphia, Pa., to, found not unreasonable or unduly prejudicial as compared with lower rates, distance considered, from south Atlantic and Gulf ports to various points or with rates from New York and Philadelphia to Buffalo, N. Y., and Erie, Pa. *Norfolk Feed Milling Co. v. P. R. R. Co.*, 788.

Oklahoma points: Class rates on iron pipe and pipe fittings from, to points in Missouri, Illinois, Kansas, and Texas, found unreasonable and unduly prejudicial as compared with lower commodity rates in the reverse directions for comparable distances. Reasonable rates prescribed and reparation awarded. *United Iron Works Co. v. Director General*, as Agent, 33 (41-42).

Okmulgee, Okla.: Rates on iron pipe fittings from, to points in the Dallas-Fort Worth Group, to Texas common points, and to Houston and Galveston, Tex., found unduly prejudicial to extent they exceed rates not less than 9 cents lower than from St. Louis, Mo., to same destinations. Reasonable rates prescribed and reparation awarded. *United Iron Works Co. v. Director General*, as Agent, 33 (42).

Petrolia, Pa.: Rate on petroleum, in barrels, from, to Memphis, Tenn., when moving via Ohio River crossings, found unreasonable and unduly prejudicial to extent it exceeded rate from points in the general vicinity or beyond Petrolia, but on such shipments as moved via Potomac Yard, Va., found not unreasonable or unduly prejudicial. Reparation awarded. *Daugherty & Son Refining Co. v. Director General*, as Agent, 197.

Rockford, Mich.: Rates on green salted hides from Chicago, Ill., Racine and Milwaukee, Wis., to, found unreasonable and unduly prejudicial to extent they exceeded rates to Grand Rapids, Mich. Measure of reasonable maximum rates prescribed and reparation awarded. *Hirth-Krause Co. v. Director General*, as Agent, 850.

Sault Ste. Marie and Fort Frances, Ontario: Relationship of rates on newsprint paper from, to destinations in the west and southwest found unduly prejudicial to those points and unduly preferential of competing manufacturing points in Minnesota and Wisconsin to extent the rates from points found prejudiced exceed the rates from the preferred points by more than the differentials herein prescribed. *Lake Superior Paper Co. (Ltd.) v. Director General*, 709.

Washington Western Ry. points: Upon further hearing, previous report 52 I. C. C., 42, defendants' refusal to maintain joint rates on lumber and forest products on the coast-group basis from points on the Washington Western, while maintaining rates on such basis from points in Washington and Oregon on their own branch lines, proprietary lines, or independent connections, found to result in undue prejudice. Reparation denied. *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 408.

61 I. C. C.

PREFERENCES AND PREJUDICES—Continued.

Minimum Weight: Fact that one point has a higher minimum than another does not of itself constitute undue preference within the meaning of the act. *Briggs & Turivas v. Director General as Agent*, 363 (365).

Persons: To accord to order—notify shippers a free transportation service that is not required by most others and that is so nearly akin to re-consignment, for which latter service a charge is made, would be an undue preference to that particular class of shippers and traffic. *Diversion and Reconsignment Rules*, 385 (391).

Spotting Cars:

Cancellation by trunk lines following *Industrial Railways Case*, 29 I. C. C., 212, of allowance formerly paid complainant or its plant facility, the Culver & Port Clinton R. R., for switching cars from its plant at Culver, Ohio, while performing a similar service for competitors without charge, found not unreasonable or unduly prejudicial, as it has not been possible for trunk line to perform the service and circumstances and conditions at complainant's plant are different from those obtaining at plants of competitors. *United States Gypsum Co. v. C. & P. C. R. R. Co.*, 117.

Defendant's refusal to make allowance to complainant for spotting cars at Harriman shipyard, near Bristol, Pa., while making allowances to other industries in the same rate district found not unreasonable, discriminatory, or unduly prejudicial, as such industries are not in competition with complainant and circumstances and conditions at the respective plants are dissimilar. *Merchant Ship-building Corp. v. P. R. R. Co.*, 214.

Failure of defendant to perform spotting service at complainant's plant at Edge Moor, Del., or to make an allowance to complainant for performing such service with its own power while making allowance for similar service at a plant adjacent to that of complainant with whom no competition exists not found to result in unreasonable, discriminatory, or unduly prejudicial rates. Complainant never requested defendant to perform the service and merely sought an allowance rather than have defendant perform it. *Edge Moor Iron Co. v. Director General as Agent*, 537.

State and Interstate:

Rate on ground limestone from Bedford, Ind., to Streator, Ill., found not unreasonable or unduly prejudicial in comparison with rate from Alton, Ill., to same destination, as different carriers participate in the traffic and the transportation conditions are not shown to be substantially similar. *Stone Products Co. v. Director General as Agent*, 51.

Upon further hearing, original report 60 I. C. C., 61, intrastate passenger fares and excess baggage charges in the state of Montana, of the Butte, Anaconda & Pacific Ry. Co., an electric line, lower than the corresponding interstate fares and charges authorized in *Increased Rates*, 1920, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Montana Rates and Fares*, 500.

PREFERENCES AND PREJUDICES—Continued.

State and Interstate—Continued.

Certain intrastate rates, fares, and charges, required by state authority to be maintained within the state, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. *North Dakota Rates, Fares, and Charges, 504*; *Arizona Rates, Fares, and Charges, 572*.

PRICE.

Iron pipe is bought and sold on the Pittsburgh basis, i. e., the price at Pittsburgh plus freight from Pittsburgh to point of delivery, regardless of the point from which shipped. *Iron Poles, Pipes, and Connections, 530 (533)*.

PRIVATE CARS.

Tank cars not belonging to carrier were switched at Pittsburgh, Pa., during federal control, by individual power, the carrier merely providing the use of its tracks. Charges assessed on basis of those intended to cover the entire cost of transportation found unreasonable to extent they exceeded those subsequently established for the service in question. Reparation awarded. *Crucible Steel Co. of America v. Director General, as Agent, 655*.

PRIVATE TRACKS. *See also SIDETRACKS.*

Receipt or delivery of c. l. freight on private or industrial tracks is merely the equivalent of a similar service on team tracks. *Diversion and Reconsignment Rules, 385 (391)*.

PROFIT.

In original reports, 42 I. C. C., 275, and 55 I. C. C., 357, rates on lumber from Portland, Oreg., found unduly prejudicial in favor of other Oregon points in the Willamette Valley, but reparation denied. Upon further hearing reparation awarded on shipments on which complainant was compelled to absorb the difference in freight rates out of profits. *Inman-Poulsen Lumber Co. v. S. P. Co., 185*.

Contention that, since price of coal was fixed by the Fuel Administration, complainants would not have received any more profit had lower rates been in effect, and award of reparation would permit profits in excess of those allowed by the Government, *Held: Complainants paid and bore unreasonable rates and are entitled to reparation. They have paid cash out of pocket that should not have been required of them. Abbott v. Director General, as Agent, 296 (300)*.

PROOF. *See BURDEN OF PROOF.*

PROPERTY.

Property referred to in paragraph (11) of section 20 of the act, refers to property offered for transportation and does not relate to buildings or other property. *National Industrial Traffic League v. A. & R. R. R. Co., 120 (124)*.

PROPORTIONAL RATES.

Proposed cancellation of proportional commodity rate on fresh meats from Jacksonville and Florida Transfer, Fla., to Tampa and other points in Florida, applicable on shipments originating in western territory, and application of higher proportional class rates, found not justified, but increase in such proportional commodity rate and proposed increased rates on salted meats, found justified. *Fresh and Salted Meats between Points in Florida, 461*.

PROPORTIONAL RATES—Continued.

Proposed increased proportional rates on iron or steel pipe, on iron or steel telegraph, telephone, and electric-railway poles, and on pipe connections, couplings, and fittings, east-bank upper Mississippi River crossings to interior Iowa points, found not justified. *Iron Poles, Pipes, and Connections*, 530.

PROSPERITY.

Prosperity of a carrier does not indicate that rates on a particular commodity are unreasonable or contribute to undue profits. *Bridgeman-Russell Co. v. G. L. T. Corp.*, 260 (267).

PROTECTIVE SERVICE. See also FREEZING; REFRIGERATION.

Assessment of rental charge of \$5 per car during the winter months, in addition to the freight rate on potatoes moving in refrigerator or insulated cars, found not unreasonable. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 680 (688).

PUBLIC INTEREST.

Paragraph (6) of section 15 recognizes clearly that divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (282).

PUBLIC SERVICE CORPORATION.

May not rely upon its financial condition as a justification for refusal to establish reasonable rules and regulations. *Limitations of Liability in Transmitting Telegrams*, 541 (550).

PUBLICATION OF TARIFFS.

Under the Commission's tariff regulations joint rates on interstate traffic might be published as single amounts or by addition of arbitraries. Latter form of publication does not render rates any the less joint rates, and mere fact that arbitrary might have been increased under general order No. 28 at time of its promulgation does not necessarily now justify increases proposed by carriers, upon whom the burden of proof still lies. *Switching Charges to and from South Tacoma*, 128 (129).

Exigencies of tariff publication are not sufficient justification for increased rates. *Substitution for Increases in Rates*, 518 (520).

Accidents of tariff publication alone should not operate to continue rates upon a basis different from that upon which they were established and intended to be maintained. *Id.* (522).

PULLMAN RAILROAD COMPANY.

History and description of. *Pullman R. R. Co.*, 637 (638).

Found to be a common carrier subject to the act. *Id.* (642).

PULLMAN SERVICE.

Intrastate charges for occupancy of space by passengers in sleeping and parlor cars, required by state authority to be maintained within the state, lower than the corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *North Dakota Rates, Fares, and Charges*, 504; *Arizona Rates, Fares, and Charges*, 572.

61 I. C. C.

RAIL-AND-WATER.

Proposed increased interstate joint and proportional rail-and-water class and commodity rates between Ohio River crossings and related points and landings on the Cumberland River, via Burnside, Ky., found not justified. Respondent sought to justify increases upon claim that it is operating at a loss under present rates and that if proposed increases are not permitted it will be compelled to discontinue operation. Rates Between Ohio River and Cumberland River Points, 10.

Proposed reduced rates on unrefined copper from Garfield Smelter and International, Utah, and McGill, Nev., to San Francisco and Oakland, Calif., for purpose of establishing an available route in connection with water carriers operating via the Panama Canal, found justified. Smelter Products from Nevada and Utah, 374.

RAIL-WATER-AND-RAIL.

Proposed reductions in class and commodity rates applicable via water-and-rail and rail, water, and rail from Atlantic seaboard territory to Texas points, found not justified. Rail-and-Water Rates from Atlantic Seaboard, 740.

RAILROAD FUEL. See FUEL.**RATE-BREAKING POINTS.**

Where practicable, establishment of in-and-out rates is desirable in lieu of transit arrangements, but every point can not be made a rate-breaking point. Cairo Board of Trade v. A., T. & S. F. Ry. Co., 219 (222).

RATE MAKING.

Cost of service is but one of the factors taken into consideration in the making of freight rates, and the wide variations in rates make it probable that many of them fail to cover all the factors of operating expense that a careful cost study might allocate against the service. P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 272 (279).

Cost, value of service, and risk assumed are important considerations in rate making. Climax Molybdenum Co. v. Director General, as Agent, 369 (373).

In arriving at distances rail routes can not be disregarded and cross-country mileages used as rail rates are not so constructed. Soda Products from Saltville, Va., 559 (562).

RATE WAR.

Proposed reductions in rates objected to on ground that further reductions will be brought about resulting in a rate war between steamship lines. Rail-and-Water Rates from Atlantic Seaboard, 740 (750).

REARGUMENT. See also FURTHER HEARING; REHEARING.

Upon reargument, former report 57 I. C. C., 201, change directed in classification rule providing basis of charges for the transportation of sulphuric acid and chloride of zinc remaining in tank cars returned to original loading points. New Jersey Zinc Co. v. Director General, 432.

REASONABLENESS OF RATE. See MEASURE OF RATE.**REBATES.**

Policy of the Western Union Telegraph Co., when a default occurs in connection with a message for which it charged the unrepeatable rate, to assume liability in excess of its legal liability, on the grounds of business policy, equity, and fair dealing, found to be a plain departure from its published rules and stands on the same footing as an unlawful rebate. Limitations of Liability in Transmitting Telegrams, 541 (546).

61 I. C. C.

RECLAIM.

Denial of switching reclaims to Birmingham Southern R. R., on foreign cars handled under division of joint rate, held not to be unreasonable or unduly prejudicial, but the assessment of demurrage against that road under uniform demurrage code, without allowance of additional free time to cover the period actually required for switching service performed, disapproved and substitute prescribed. *Birmingham Southern R. R. Co. v. Director General*, as Agent, 551.

Following *Industrial Railways Case*, 29 I. O. C., 212, 231, and other cited cases, allowance of switching reclaims to industrial common carriers, condemned. *Id.* (555).

Carriers must observe reasonable rules and practices with respect to car service as defined in the act; however, car interchange is primarily a matter of agreement. The common carrier status of a road gives no inherent right to per diem or reclaim. *Id.* (556).

Payment of per diem reclaims to industrial railroads may result in preferences and advantages to the proprietary industries, and is not a proper basis for settlement by an industrial railway for the use or detention upon its line of foreign cars. *Illinois Northern Ry.*, 629 (634); *Pullman R. R. Co.*, 637 (644).

RECONSIGNMENT.

Where shipper made request for application of lower rate to an intermediate point under Rule 77 of Tariff Circular 18-A, as provided in tariff, failure of carrier to comply found in violation of tariff provision, but, since shipment was billed and moved to the farther distant point and then reconsigned to the intermediate point, combination rate legally applicable found not unreasonable or unlawful. *Red Star Yeast & Products Co. v. Director General*, as Agent, 107.

Proposed rules and charges governing diversion and reconsignment of fruits and vegetables found inadvisable for application under present conditions. *Diversion and Reconsignment Rules*, 985 (987).

Tariff rule providing that orders for diversion or reconsignment of commodities other than perishable freight, coal, coke, or fuel oil will not be accepted to a station or point of delivery against which an embargo was in force when the shipment left point of origin, disapproved. *Id.* (388).

Proposed tariff rule governing reconsignment or diversion before and after placement, where back-haul or out-of-line movements involved, found not justified in so far as it fails to provide for the exception covering shipments placed on public delivery tracks. *Id.* (388-389).

Tariff rule under which order-notify shipments placed for inspection upon request of consignees or in conformity with billing instructions, and which require subsequent movements, are subject to the same rule and charges as "straight" consignments placed for inspection, found justified. *Id.* (389).

So long as the handling of order-notify shipments held for surrender of the bill of lading, or of shipments placed for inspection, is, to all practical intents and purposes, identical with that of other shipments held and reconsigned within switching limits before placement, dissimilarity of service can not be invoked to justify the application of different rules and charges. *Id.* (390).

RECONSIGNMENT—Continued.

An ordinary reconsignment within or beyond switching limits is not a necessary incident of transportation and only occurs on a minority of shipments. *Id.* (890).

To accord to order-notify shippers a free transportation service that is not required by most others and that is so nearly akin to reconsignment, for which latter service a charge is made, would be an undue preference to that particular class of shippers and traffic. *Id.* (891).

Demurrage charges accruing while shipper was endeavoring to obtain necessary permit to have shipments reconsigned to embargoed points found not unreasonable or unlawful as tariffs of carriers specifically prohibited reconsignment to embargoed points. *Maguire & Co. v. Director General, as Agent*, 658.

REDUCTION IN RATES.**By Carriers:**

Legally applicable line-haul rate charged on iron ore, moving during federal control, from Pohatcong R. R. interchange tracks near Oxford Furnace, N. J., to Oxford Furnace, found unreasonable to extent it exceeded switching charge subsequently established. *Pequest Co. v. Director General, as Agent*, 18.

Class rates on spent sulphuric or sludge acid, in tank-car loads, moving during federal control, from Arkansas City, Eldorado, Augusta, and Wichita, Kans., to Coffeyville, Kans., exceeded lower commodity rates subsequently established. Reparation awarded. *Sinclair Refining Co. v. Director General, as Agent*, 18.

Following *Birdsboro Case*, 49 I. C. C., 681, distance scale of rates was prescribed from Birdsboro, Pa., on crushed rock, but shipments do not originate at that point. Commission's order omitted Monocacy, Pa., at which points shipments do originate, and carriers after considerable delay established from Monocacy the distance scale prescribed from Birdsboro. *Held*: Rates charged on shipments moving during interim found unreasonable and reparation awarded. *Birdsboro Stone Co. v. P. R. R. Co.*, 46.

Class rate legally applicable on asphaltum, moving during federal control from Bayonne, Constable Hook, and Warners, N. J., to Jersey Avenue Station, Jersey City, N. J., found unreasonable as compared with lower commodity rates to other New Jersey points for similar distances. Reparation awarded on basis of commodity rate subsequently established. *National Asbestos Mfg. Co. v. Director General, as Agent*, 54.

Voluntary reduction of a rate by carriers found not sufficient ground upon which to base a finding that the former rate was unreasonable. *Pittsburgh Crucible Steel Co. v. Director General, as Agent*, 56.

Proposed reduced rates on salt from Burmester and Salduro, Utah, and Reno, Nev., to San Francisco, Calif., and cancellation of certain rates to intermediate points carrying minimum weights lower than proposed reduced rates, found justified, as the proposed changes will restore the basis prevailing prior to *Increased Rates, 1920*, 58 I. C. C., 220, and will bring them down to a level where the traffic will again move in competition with San Francisco bay points. Salt from Utah to San Francisco, 58.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Due to negligence or delays attending commercial transactions, terms of export tariff not complied with, but since shipments did not contribute to congestion any more than they would have done if handled in conformity with the rules, *Held*: Domestic charges assessed found unreasonable as compared with charges on similar export shipments handled in compliance with the rules, and to extent they exceeded charges under tariff provisions subsequently established. Reparation awarded. *Anderson & Co. v. Director General*, as Agent, 64.

Defendant's agent erroneously quoted rate in effect via other routes as applying via route of movement, but tariff did not, at time shipment moved, permit grazing in transit at point here involved. Subsequently such lower rate established via route of movement. *Held*: Misquotation of a rate by a carrier does not of itself afford a basis for an award of reparation, and the Commission refuses to give retroactive effect to a transit arrangement, except to remove unlawful discrimination. *Taylor v. Director General*, as Agent, 109.

Rate on cotton, delivered uncompressed to carrier at Jackson, Tenn., compressed at its expense, and forwarded to Cordova, Ala., found unreasonable to extent it exceeded lower rate in effect via other routes on compressed cotton, and on uncompressed cotton to be transported to destination uncompressed, which lower rate was subsequently established via route of movement and which is the usual basis in this territory on uncompressed cotton, with carrier's privilege of compression. Reparation awarded. *Memphis Freight Bureau v. Director General*, as Agent, 125.

Rate on petrolatum, in barrels, from Petrolia, Pa., to Memphis, Tenn., when moving via Ohio River crossings, found unreasonable and unduly prejudicial to extent it exceeded rate from points in the general vicinity or beyond, which lower rate was subsequently established from Petrolia. Reparation awarded. *Daugherty & Son Refining Co. v. Director General*, as Agent, 197.

Tariff restricted application of import rate to traffic stored in possession of inland carriers or appraisers' stores, but subsequently was made applicable to shipments stored in privately owned warehouses. Domestic rates charged on shipments stored in private warehouses because railroad warehouses unavailable and storage in appraisers' stores not permissible, found unreasonable. Reparation awarded. *American Mfg. Co. v. M. P. R. R. Co.*, 341.

Third-class rate on boat rudders from Wheeling, W. Va., to Wilmington, N. C., found unreasonable as compared with rates between other points for similar distances. Reparation awarded on basis of fifth-class rate subsequently established. *Fuller Co. v. A. C. L. R. R. Co.*, 343.

Express rate and icing charge on cantaloupes from Horatio, Ark., to New Orleans, La., found unreasonable as compared with lower rates and charges maintained to more distant points. Reparation awarded on basis of lower rate and icing charge subsequently established. *Gateway Produce Co. v. American Ry. Exp. Co.*, 347.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Proposed reduced rates on unrefined copper from Garfield Smelter and International, Utah, and McGill, Nev., to San Francisco and Oakland, Calif., for purpose of establishing an available route in connection with water carriers operating via the Panama Canal, found justified. Smelter Products from Nevada and Utah, 374.

Domestic rates on imported nitrate of soda from New York, N. Y., and Baltimore, Md., to East St. Louis, Ill., established pursuant to the cancellation of all import rates by the Director General under general order No. 28, found unreasonable to extent they exceeded lower domestic rate subsequently established. Reparation awarded. Monsanto Chemical Works v. P. R. R. Co., 399.

Domestic rate on liquid asphalt, in tank cars, from Mereaux, La., to Milwaukee, Wis., established by the Director General on June 25, 1918, on which date all import rates were canceled, found unreasonable to extent it exceeded lower domestic rate subsequently established when Mereaux was placed on the New Orleans rate basis. Reparation awarded. Johns-Manville Co. v. Director General, as Agent, 420.

Rates on solidified soya-bean and peanut oil, in bags, from Atlanta, Ga., to various destinations, found unreasonable to extent they exceeded lower rates on the same commodities when in barrels, which lower rates were established after shipments had moved. Reparation awarded. Swift & Co. v. Director General, as Agent, 457.

Class rates on sulphuric acid, in tank-car loads, from Charlotte, N. C., to Greenville, S. C., and Selma, N. C., moving during federal control, exceeded lower commodity rates subsequently established. Reparation awarded. Virginia-Carolina Chemical Co. v. Director General, as Agent, 473.

Rate applicable on chipboard from Whippany, N. J., to Jersey City, N. J., moving during federal control, found unreasonable to extent it exceeded lower rate subsequently established. Collection of undercharges waived. United Paperboard Co. (Inc.) v. M. & E. R. R. Co., 483.

Rate on steel car-plates, moving during federal control, from Indiana Harbor, Ind., to Michigan City, Ind., found unreasonable as compared with lower rate between other points in the same general territory for similar distances, and to extent it exceeded lower rate subsequently established. Reparation awarded. Steel & Tube Co. v. Director General, as Agent, 523.

Following *Swift & Co.*, 55 I. C. C., 324, rate on stable manure from Camp Sherman, Ohio, to Parma, Ohio, via an interstate route, found unreasonable to extent it exceeded lower rate subsequently established. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 537.

Third-class any-quantity rate on copra, from Rolling Fork, Miss., to New Orleans, La., found not unduly prejudicial but unreasonable to extent it exceeded class D rating on cottonseed, which lower rate was subsequently made applicable to copra. Reparation awarded. Rolling Fork Oil Co. v. Director General, as Agent, 627.

61 I. C. C.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Tank cars not belonging to the carrier were switched at Pittsburgh, Pa., during federal control by individual power, the carrier merely providing the use of its tracks. Charges assessed on basis of those intended to cover the entire cost of transportation found unreasonable to extent they exceeded those subsequently established for the service in question. Reparation awarded. *Crucible Steel Co. of America v. Director General, as Agent*, 655.

Following *Birdsboro Stone Co.*, 61 I. C. C., 46, rates on crushed stone from Monocacy, Pa., to destinations in Pennsylvania, moving during federal control, found unreasonable to extent they exceeded distance rates subsequently established. Reparation awarded. *Birdsboro Stone Co. v. P. R. R. Co.*, 657.

Intrastate shipment moved as routed during federal control. Lower rate in effect via another route was subsequently established via route of movement. *Held*: Mere existence of a lower rate between the same points over another route and the subsequent reduction of the rate over route of movement does not establish the unreasonableness of the preexisting rate. *Little Cahaba Coal Co. v. Director General, as Agent*, 663.

Domestic rates on imported nitrate of soda from New York, N. Y., and points taking same rates, and Baltimore, Md., to Sandusky, Ohio, and from Baltimore, Md., to Ivorydale, Ohio, assessed as a result of cancellation by the Director General of all import rates under general order No. 28, found unreasonable to extent they exceeded lower rates established subsequent to *General Chemical Co.*, 57 I. C. C., 222. Reparation awarded. *Jarecki Chemical Co. v. Director General, as Agent*, 692.

Domestic rates legally applicable on evaporated milk from points in Wisconsin and Indiana to New Orleans, La., and Mobile, Ala., for export, found not unreasonable as compared with lower export rates maintained to Atlantic ports, which lower rates were subsequently established to New Orleans and Mobile. *Nestle's Food Co. (Inc.) v. M. & O. R. R. Co.*, 695.

Sixth-class rate on coal-tar oil, in tank-car loads, from Chattanooga, Tenn., to Solvay, N. Y., found unreasonable as compared with lower commodity rate from Birmingham, Ala., a farther distant point. Reparation awarded on basis of commodity rate subsequently established. *Chattanooga Coke & Gas Co. v. Director General, as Agent*, 729.

Proposed increased and reduced rates on glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, in straight or mixed carloads, from certain points in Oklahoma and Texas to points in Arkansas and southeastern states, found not justified, as they contain many inconsistencies and would result in violations of sections 3 and 4 of the act. *Glass and Glassware from Oklahoma and Texas*, 733.

Proposed reductions in class and commodity rates applicable via water-and-rail and rail, water, and rail from Atlantic seaboard territory to Texas points found not justified. *Rail-and-Water Rates from Atlantic Seaboard*, 740.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Minimum charge of \$15 per car established by the Director General on June 25, 1918, and assessed on wet phosphate rock moving during federal control from Alafia, Fla., to Agricola, Fla., found unreasonable to extent it exceeded 20 cents per long ton, minimum marked capacity of car, subsequently established. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 751.

Increased charges instituted by the Director General on June 25, 1918, and assessed on shipments of coal moving during federal control by complainant's own power, between its plants at Pittsburgh, Pa., in cars furnished by the Director General and over tracks of defendant carrier, found unreasonable to extent they exceeded lower charges subsequently established for the service in question. Reparation awarded. *Crucible Steel Co. of America v. Director General*, as Agent, 753.

By Commission:

First-class any-quantity rates on hair and wool press cloth from certain north Atlantic ports and related points to points in Texas and the southeast; from Houston, Tex., to points in the southeast; and between points in the southeast, not found unreasonable or unduly prejudicial when applied to l. c. l. shipments, or as compared with lower rating on cotton press cloth, but found unreasonable when applied to c. l. shipments. Reasonable maximum c. l. rates prescribed. *Interstate Cotton Seed Crushers' Asso. v. Director General*, 1.

Rate on returned empty beer-substitute carriers from Tulsa, Okla., to Denver, Colo., found unreasonable to extent it exceeded rate from Coffeyville, Kans., and Kansas City, Mo., which lower rate also applied from all points taking Missouri River rates. Reasonable rate prescribed and reparation awarded. *Marshall-Young Co. v. Director General*, as Agent, 61.

Rates on zinc ore from the Platteville, Wis., district to Peru and La Salle, Ill., not found unreasonable or unduly prejudicial with relation to rates accorded competitors from Mineral Point, Wis., to Depue, Ill., but found unreasonable to extent they exceeded rate on ore treated at Galena, Ill., and reshipped to La Salle. Reasonable rate prescribed and reparation awarded. *Illinois Zinc Co. v. Director General*, as Agent, 92 (102).

Class rates on oil-well outfits and supplies from Burkburnett, Tex., to Mansfield and Gahagan, La., and on wrought-iron pipe from Wichita Falls, Tex., to Gahagan, found unreasonable to extent they exceeded commodity rates from New Orleans, La., and points in New Orleans territory, including Mansfield and Gahagan, to Burkburnett and Wichita Falls. Reasonable rates prescribed and reparation awarded. *Goodman Drilling Co. v. Director General*, as agent, 164.

Rates on hardwood logs from stations on the Y. & M. V. R. R., in Mississippi, to Dyersburg and Trimble, Tenn., on the Illinois Central, the application of which is conditioned upon the manufactured product being shipped out over the latter line, found unreasonable to extent they exceed defendants' individual distance scales of net rates similarly conditioned applicable between points on their respective lines to be applied as a joint continuous distance scale. Reasonable maximum scale prescribed. *North Vernon Lumber Co. v. I. C. R. R. Co.*, 355.

REDUCTION IN RATES—Continued.

By Commission—Continued.

Domestic rate on imported nitrate of soda from Norfolk, Va., and Baltimore, Md., to points in c. f. a. territory, established by the Director General on June 25, 1918, on which date all import rates were canceled, found unreasonable to extent it exceeded lower domestic rate established in compliance with findings in *General Chemical Co., 57 I. C. C., 222*, which lower rate is prescribed for the future. *King Powder Co. v. Director General, as Agent, 459.*

Rate on Epsom salts, in barrels, from Atlanta, Ga., to Knoxville, Tenn., found unreasonable and unduly prejudicial as compared with rates to Memphis and Nashville, Tenn., Louisville and Lexington, Ky., and Cincinnati, Ohio, farther distant competitive points. Reasonable maximum rate prescribed and reparation awarded. *Davis Mfg. Co. v. Director General, as Agent, 607.*

Commodity rates on fresh fruits and vegetables, in mixed carloads, from Los Angeles and San Francisco, Calif., to Bisbee and Douglas, Ariz., found unreasonable to extent they exceeded class-C rates contemporaneously in effect. Reasonable maximum rates prescribed and reparation awarded. *Buxton-Smith Co. v. Director General, as Agent, 623.*

Rates on potatoes from points in Minnesota and Wisconsin within the Princeton group to destinations in northeast Texas found unreasonable and reasonable maximum rates prescribed, but rates to Texas common points not included in northeast Texas found not unreasonable except to extent that rates from points in Wisconsin north of Fox River territory exceeded or exceed the rate herein prescribed. *Northern Potato Traffic Asso. v. B. & O. R. R. Co., 680 (686-687).*

Sixth-class rates on roofing and paving tars and pitches and fuel pitch in official classification territory found unreasonable to extent they exceed 80 per cent of sixth-class, except between New England and trunk line territories, where the greater part of the hauls is within New England, and locally in New England territory, for which sixth-class found reasonable. Reparation denied. *Watson Co. v. Director General, as Agent, 719.*

REFRIGERATION.

Contention that unreasonable charges resulted because allowance made complainant for furnishing ice and salt on l. c. l. shipments of dressed poultry, butter, eggs, and cheese was less than defendant's charge for furnishing the same, *Held:* Not sustained, as no evidence of record that through charges, less allowance for ice and salt furnished, were unjust or unreasonable for service performed. *Swift & Co. v. Director General, as Agent, 183.*

Aggregate charges on butter, other dairy products, dressed poultry, and eggs, moving lake and rail from Duluth, Minn., to eastern destinations, comprising the joint third-class rates and separately established refrigeration charge during the lake movement, Duluth to Buffalo, N. Y., found not unreasonable, as the service is superior and the total charges substantially less than via all rail. *Bridgeman-Russell Co. v. G. L. T. Corp., 260.*

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REFRIGERATION—Continued.

Charges on citrus fruits and vegetables from Florida found not unreasonable in the aggregate, but refrigeration charges in so far as they are based on an excessive quantity of ice, and line-haul charges on vegetables, except celery, under refrigeration, in that they do not provide, in those instances where a lower minimum and higher rate apply than under ventilation, for the alternative application of the same rate and minimum as under ventilation, found unreasonable. *Railroad Commissioners of Florida v. Director General*, 438.

REFRIGERATOR CARS.

Average loading capacity of bunkers of Fruit Growers Express cars as a whole found not in excess of 9,200 pounds per car, and under methods of loading prevailing in southern territory average amount of ice used in full-tank loading of empty bunkers found to be substantially less and does not exceed 8,500 pounds. *Railroad Commissioners of Florida v. Director General*, 438 (451).

REFUSED SHIPMENT.

Tariff provided that "Notice shall be sent or given consignee in writing, or as otherwise agreed to," but made no provision for notice to consignor when shipment refused at destination. Order-notify consignee notified by telephone and in person, and when it became apparent that he was not going to accept shipment consignor was notified by letter and disposition orders were given. Demurrage accruing found lawfully assessed. *Hewitt-Lea-Funk Co. v. Director General*, as Agent, 49.

REHEARING. See also FURTHER HEARING; REARGUMENT.

Upon further hearing, original report, 53 I. C. C., 529, rates on fire brick, fire clay, and dolies, from St. Louis and Mexico, Mo., to Quinton, Okla., found unreasonable to extent they exceeded the aggregate of intermediate rates, and reparation awarded, but prior finding that evidence of damage was not sufficient to support an award of reparation under finding of undue prejudice, affirmed. *Quinton Spelter Co. v. Ft. S. & W. R. R. Co.*, 43.

Upon further hearing, former report 53 I. C. C., 278, rates on pine lumber from Autaugaville, Ala., to interstate destinations found not unreasonable, but the maintenance of higher rates from Autaugaville than the group rate from Booth, Ala., the junction between the Alabama Central and the Mobile & Ohio railways, found unduly prejudicial. Reparation denied. *Whitewater Lumber Co. v. A. C. Ry.*, 563.

RELATIONSHIP OF RATES. See also ADJUSTMENT OF RATES; PARITY OF RATES; RELATIVE ADJUSTMENT.

It can not be said that a commodity rate must bear a fixed relation to the corresponding class rate, even as between competing points. *Quinton Spelter Co. v. Ft. S. & W. R. R. Co.*, 43 (44).

Adjustment of rates on zinc ore from the Joplin, Mo., and Miami, Okla., districts to Peru and La Salle, Ill., found not unreasonable or unduly prejudicial with relation to ore rates from competing Colorado points. *Illinois Zinc Co. v. Director General*, as Agent, 92 (99, 100).

Rates on zinc ore from the Platteville, Wis., district to Peru and La Salle, Ill., not found unreasonable or unduly prejudicial with relation to rates accorded competitors from Mineral Point, Wis., to Depue, Ill., but found unreasonable to extent they exceeded rate on ore treated at Galena, Ill., and reshipped to La Salle. Reasonable rate prescribed and reparation awarded. *Id.* (102).

RELATIONSHIP OF RATES—Continued.

Rates on spelter from Peru and La Salle, Ill., to eastern trunk line and New England territories, increased on June 25, 1918, under general order No. 28, resulting in increases in excess of 25 per cent, the maximum authorized under that order, found not unreasonable or unduly prejudicial with relation to the corresponding rates from competing western points. *Id.* (105).

Rates on sheet or rolled zinc from Peru and La Salle, Ill., to eastern trunk line and New England territories found not unreasonable or unduly prejudicial with relation to rates on spelter from competing producing points to competing eastern rolling mills. *Id.* (106).

Rates on brick (except bath or enamel), hollow building tile, and fire clay, in straight or mixed carloads, from Great Falls, Mont., to certain points in Wyoming, found unreasonable and unduly prejudicial to extent they exceed certain differentials under the rates from Denver, Colo. Reasonable and nonprejudicial relationship prescribed. *Great Falls Brick & Tile Co. v. Director General*, 178.

Proposed increased rates on soda products from Saltville, Va., to points in c. f. a. territory, which will place them on a level, distance considered, with the rates from Alkali, Ohio, a competing point, found justified. *Soda Products from Saltville, Va.*, 559.

A rate increase uniform in amount necessarily tends to preserve rather than disrupt preexisting relationships. This is not true of a percentage increase. *Barnett Oil & Gas Co. v. Director General*, as Agent, 568 (570).

Rates on cement from Mason City, Iowa, to points in North Dakota and northern Minnesota found unreasonable and unduly prejudicial to Mason City as compared with rates from Duluth (Steeltown), Minn., to the same points. Reasonable and nonprejudicial rates prescribed. *Lehigh Portland Cement Co. v. Director General*, 613.

On potatoes from points in Minnesota and Wisconsin, within the Princeton group, to destinations in trunk line territory found unduly prejudicial to shippers at those points and unduly preferential of shippers located at other Wisconsin points to extent that the rates from the Princeton group points exceed those from the other Wisconsin points by more than 3 cents per 100 pounds. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 680 (683).

On newsprint paper from Sault Ste. Marie and Fort Frances, Ontario, to destinations in the west and southwest found unduly prejudicial to those points and unduly preferential of competing manufacturing points in Minnesota and Wisconsin to extent the rates from points found prejudiced exceed the rates from the preferred points by more than the differentials herein prescribed. *Lake Superior Paper Co. (Ltd.) v. Director General*, 709.

RELATIVE ADJUSTMENT. *See also* ADJUSTMENT OF RATES; RELATIONSHIP OF RATES.

To effectuate the relative adjustment of class rates prescribed in *Wisconsin Rate Cases*, 44 I. C. C., 602, from eastern points to La Crosse, Wis., on the one hand, and Dubuque, Iowa, St. Paul, Minn., and Chicago, Ill., on the other, disrupted by various increases permitted since that decision, present class rates to La Crosse found unreasonable and unduly prejudicial and reasonable and nonprejudicial rates prescribed. *La Crosse Chamber of Commerce v. A. A. R. R. Co.*, 289.

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RELATIVE RATES.

In General: Citation of lower rates at other points is not conclusive of the unreasonableness of rates charged. *Schram Glass Mfg. Co. v. Director General*, as Agent, 433 (437).

Chattanooga, Tenn.: Sixth-class rate on coal-tar oil, in tank-car loads, from, to Solvay, N. Y., found unreasonable as compared with lower commodity rate from Birmingham, Ala., a farther distant point. Reparation awarded on basis of commodity rate subsequently established. *Chattanooga Coke & Gas Co. v. Director General*, as Agent, 729.

Climax, Colo.: Rates applicable on molybdenum from, to destinations on and east of the Missouri River via Denver, Colo., found not unreasonable or unduly prejudicial as compared with other rates on ores and concentrates in the same general territory, as no appreciable movements thereunder or similarity of transportation conditions shown to exist. *Climax Molybdenum Co. v. Director General*, as Agent, 369.

Florida points: Rates on soaps, washing, cleansing, and soap powders, and scouring compounds, of declared or agreed value not in excess of 20 cents per pound from Louisville, Ky., Cincinnati, Ohio, Port Ivory, N. Y., and Weehawken and Jersey City, N. J., to junction points in northern Florida found unreasonable to extent they exceed, distance considered, the rates to points in southern Georgia. Measure of reasonable maximum rates prescribed. *Procter & Gamble Distributing Co. v. A. C. Ry.*, 700 (707-708).

Huntingburg, Ind.: Rate on oak lumber from, to Dayton, Ohio, found not unreasonable as compared with lower rates from St. Louis, Mo., and other farther distant competitive points to same destination. *Buckeye Veneer Co. v. Director General*, as Agent, 673.

Jersey Avenue Station, Jersey City, N. J.: Class rate legally applicable on asphaltum, moving during federal control, from Bayonne, Constable Hook, and Warners, N. J., to, found unreasonable as compared with lower commodity rates to other New Jersey points for similar distances. Reparation awarded on basis of commodity rate subsequently established. *National Asbestos Mfg. Co. v. Director General*, as Agent, 54.

Southeastern points: Fifth-class rate on wooden truck barrels from Norfolk, Va., to Charleston, S. C., established in connection with the general readjustment following *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, not found unreasonable as compared with commodity rates from and to various southern points for similar distances not similarly revised. *Ansaldo & Nicholes v. Director General*, as Agent, 664.

Tulsa, Okla.: Rate on returned empty beer-substitute carriers from, to Denver, Colo., found unreasonable to extent it exceeded rate from Coffeyville, Kans., and Kansas City, Mo., which lower rate also applied from all points taking Missouri River rates. Reasonable rate prescribed and reparation awarded. *Marshall-Young Co. v. Director General*, as Agent, 61.

RELEASED RATES. *See also CUMMINS AMENDMENT.*

Prayer for establishment of rates on molybdenum dependent upon declared or released values, based on fact that service required in the transportation of ores of higher values is no greater than on ores of lower values, *Held*: Facts that shipments move over a narrow-gauge line on which grades are heavy and value of molybdenum is extraordinarily high, found not to justify establishment of such rates. *Climax Molybdenum Co. v. Director General*, as Agent, 369.

RELEASED RATES—Continued.

Carrier's agent had sufficient knowledge as to true value of shipper's product to require notation "Value over \$100 per net ton" to be placed on bills of lading to prevent misdescription. This was in no sense "the value declared or agreed upon in writing as the released value of the property" within the purview of the second Cummins amendment. Billing so indorsed does not limit recovery of the full actual value, whatever it might be. *Id.* (371).

If carriers desire to carry rates based upon declared or released values, they should seek approval of rules that will clearly effect the purpose and be free from question as to conformity with the Cummins amendment. *Id.* (371).

Provision should be made in rules of telegraph companies for the transmission of valued messages under a liability limited to the value stated in writing by the sender at the time they are offered for transmission upon payment of the repeated rate plus one-tenth of 1 per cent of the stated value in excess of \$5,000. *Limitation of Liability in Transmitting Telegrams*, 541 (550).

RENTAL.

Assessment of rental charge of \$5 per car during the winter months, in addition to the freight rate on potatoes moving in refrigerator or insulated cars, found not unreasonable. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 680 (688).

REPARATION. See DAMAGES.**REPEAL.**

Jurisdiction may be taken away by repeal of the statutes conferring it by necessary implication as well as by express words, but if a statute giving a special remedy is repealed without a saving clause in favor of pending suits, all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect it can not be after, and if a law conferring jurisdiction is repealed without any reservation as to pending cases all such cases fall with the law. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (276).

REPEATED MESSAGES. See TRANSMISSION OF INTELLIGENCE.**RESHIPPING RATES.**

On grain from St. Louis, Mo., to points in Indiana and Kentucky, established following cancellation of reshipping rates on grain originating in Illinois or beyond the so-called 100-mile zone west of the Mississippi River, from St. Louis to Louisville, Ky., Cincinnati, Ohio, and points taking same rates, approved in 59 I. C. C., 485, found not unreasonable and former finding affirmed. Grain from St. Louis to Cincinnati and Louisville, 256.

RESOLUTION.

Report of the Commission in response to Senate Resolution relating to the increased cost of fuel to steam railroads of the United States for the year 1920 as compared with the cost for the year 1919. *Increased Cost of Railroad Fuel, 1920*, 761.

RESTORED RATES.

Proposed reduced rates on salt from Burmester and Salduro, Utah, and Reno, Nev., to San Francisco, Calif., and cancellation of certain rates to intermediate points carrying minimum weights lower than proposed reduced rates found justified, as the proposed changes will restore the basis prevailing prior to *Increased Rates, 1920*, 58 I. C. C., 220, and will bring them down to a level where the traffic will again move in com-

RESTORED RATES—Continued.

petition with San Francisco bay points. Salt from Utah to San Francisco, 58.

Rates on bituminous coal from the "inner crescent" group of mines on the L. & N. R. R. in Kentucky, to Toledo, Ohio, for transshipment by lake, increased after termination of federal control and subsequently restored to their former level, found not unreasonable. Harlan County Coal Asso. v. L. & N. R. R. Co., 394.

RESTRICTED RATES.

A carrier is entitled to reasonable compensation for switching or other services, but is not justified in attempting to restrict traffic to its own line by making an excessive charge for switching to or from its connections. The propriety of switching charges absorbed by carriers must be considered as though they were to be charged for by the railroad rendering the service and paid for by shippers. Interchange Switching at Wichita, 205 (206).

Carriers moving grain into Cairo, Ill., for transit not justified in restricting outbound movement to their own rails, as that point is entitled to the same advantages as St. Louis, Mo., and Memphis, Tenn., from which points grain is free to move outbound to any destination via any carrier. Cairo Board of Trade v. A., T. & S. F. Ry. Co., 219 (222).

Tariff restricted application of import rate to traffic stored in possession of inland carriers or appraisers' stores, but subsequently was made applicable to shipments stored in privately owned warehouses. Domestic rates charged on shipments stored in private warehouses because railroad warehouses unavailable and storage in appraisers' stores not permissible found unreasonable. Reparation awarded. American Mfg. Co. v. M. P. R. R. Co., 341.

Rates on hardwood logs from stations on the Y. & M. V. R. R. in Mississippi to Dyersburg and Trimble, Tenn., on the Illinois Central, the application of which is conditioned upon the manufactured product being shipped out over the latter line, found unreasonable to extent they exceed defendants' individual distance scales of net rates similarly conditioned applicable between points on their respective lines to be applied as a joint continuous distance scale. Reasonable maximum scale prescribed. North Vernon Lumber Co. v. I. C. R. R. Co., 355.

RETROACTIVE.

The Commission has repeatedly refused to give retroactive effect to transit arrangements except to remove unlawful discriminations. Taylor v. Director General, as Agent, 109 (110).

Under the interstate commerce act prior to its amendment by the transportation act, 1920, the Commission could require the adjustment of divisions prior to filing of complaint, but under paragraph (6), which was added to section 15 by the transportation act, it can require adjustment of divisions only from the time the complaint was filed. P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 272 (275-276).

RETURN ON INVESTMENT.

The law neither provides nor contemplates that short lines shall receive compensation out of line-haul rates that will yield a return upon the value of the carrier property. They are certainly not entitled to such return from that source upon the value of facilities which are not used by or open to the public generally. Wyandotte Southern Ry. Co., 756 (760).

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RETURNED EMPTIES.

Rates on returned empty beer-substitute carriers from Tulsa, Okla., to Denver, Colo., found unreasonable to extent it exceeded rate from Coffeyville, Kans., and Kansas City, Mo., which lower rate also applied from all points taking Missouri River rates. Reasonable rate prescribed and reparation awarded. *Marshall-Young Co. v. Director General*, as Agent, 61.

Contention that a return shipment constitutes a part of the whole movement, as a carload of empty beer carriers is generally ready to be sent back when a car of filled carriers is delivered: *Held*, The "returned" element should be disregarded. *Id.* (62).

Upon reargument, former report 57 I. C. C., 201, change directed in classification rule providing basis of charges for the transportation of sulphuric acid and chloride of zinc remaining in tank cars returned to original loading points. *New Jersey Zinc Co. v. Director General*, 432.

REVENUE. See **EARNINGS**; **TON-MILE REVENUE**.

RISK.

Cost, value of service, and risk assumed are important considerations in rate making. *Climax Molybdenum Co. v. Director General*, as Agent, 369 (373).

RIVER CROSSINGS. See also **MISSISSIPPI RIVER CROSSINGS**.

Proposed increase of 0.5 cent per 100 pounds in commodity rates on fresh meats and dressed poultry from Cairo, Ill., and Ohio River crossings to destinations in the southeast for purpose of placing rates through those points on a parity with the rates through Memphis, Tenn., which relationship had existed for many years, found not justified. *Fresh Meats and Dressed Poultry from Ohio River*, 610.

RIVER TRACKS. See **INCLINE TRACKS**.

ROUTES.

Defendant's agent erroneously quoted rate in effect via other routes as applying via route of movement, but tariff did not at time shipment moved permit grazing in transit at point here involved. Subsequently such lower rate established via route of movement. *Held*: Misquotation of a rate by a carrier does not of itself afford a basis for an award of reparation, and the Commission refuses to give retroactive effect to a transit arrangement except to remove unlawful discrimination. *Taylor v. Director General*, as Agent, 109.

Rate on cotton, delivered uncompressed to carrier at Jackson, Tenn., compressed at its expense, and forwarded to Cordova, Ala., found unreasonable to extent it exceeded lower rate in effect via other routes on compressed cotton, and on uncompressed cotton to be transported to destination uncompressed, which lower rate was subsequently established via route of movement and which is the usual basis in this territory on uncompressed cotton, with carrier's privilege of compression. Reparation awarded. *Memphis Freight Bureau v. Director General*, as Agent, 125.

Proposed cancellation of tariff provision applicable in connection with distance rates prescribed in *Galveston Commercial Asso.*, 57 I. C. C., 390, providing that lowest rate applicable via any routes shall be applied via other routes accepting the freight for transportation, found not justified. *Iron and Steel Articles from Galveston and Houston to Louisiana*, 270.

Rate on sulphur from Sulphur Mines, La., to Knoxville, Tenn., via Memphis, Tenn., found not unduly prejudicial as compared with rates to Nashville and Chattanooga, Tenn., via the same route, but via New Orleans, La., found unduly prejudicial to Knoxville. *Davis Mfg. Co. v. Director General*, as Agent, 345.

ROUTES—Continued.

Proposed reduced rates on unrefined copper from Garfield Smelter and International, Utah, and McGill, Nev., to San Francisco and Oakland, Calif., for purpose of establishing an available route in connection with water carriers operating via the Panama Canal, found justified. Smelter Products from Nevada and Utah, 374.

Due to an embargo via the normal route, shipper was obliged to route intrastate shipments for delivery via route over which higher rate applied. *Held*: As distances over both routes practically the same and shipments moved during federal control when the carriers were being operated as part of a national system, and were, for then-present purposes, a single line, higher rate charged found unreasonable. Reparation awarded. Barrett Co. v. Director General, as Agent, 401.

Where shipments specifically routed via higher rated route, carriers can not be held responsible, as damage could have been avoided by designating route over which lower rate applied. Furthermore, the existence of a lower rate over other routes does not of itself warrant a condemnation of the rate charged. Berry Bros. (Inc.) v. C. & N. W. Ry. Co., 405.

Intrastate shipment moved as routed during federal control. Lower rate in effect via another route was subsequently established via route of movement. *Held*: Mere existence of a lower rate between the same points over another route and the subsequent reduction of the rate over route of movement does not establish the unreasonableness of the preexisting rate. Little Cahaba Coal Co. v. Director General, as Agent, 663.

ROUTING INSTRUCTIONS.

Where shipper's directions in bill of lading specifies routing of shipments via a particular line, such instructions authorize movement over a route which would afford that road a line haul. United Paperboard Co. (Inc.) v. M. & E. R. R. Co., 483 (484).

Rate and route inserted by shipper in bill of lading did not coincide. Initial carrier's agent failed to ascertain from shipper before forwarding whether instructions as to rate or route should govern. *Held*: Following *Conf. Ruling 474 (c)*, shipments misrouted. Reparation awarded. Mulkey Salt Co. v. Director General, as Agent, 669.

RULES OF PRACTICE.

Complainant, in complying with Rule V of the Commission's Rules of Practice, authorized to submit an affidavit to effect that it paid and bore the freight charges, with understanding that if defendants object further hearing may be requested regarding subject of reparation. Illinois Zinc Co. v. Director General, as Agent, 92 (102).

RULES, REGULATIONS, AND PRACTICES.

Differences in conditions may justify variations in rules and practices. Uniformity is highly desirable with respect to many practices of common carriers, but where uniformity injuriously affects practices that are essentially local, it is not desirable. National Industrial Traffic League v. A. & R. R. R. Co., 120 (123).

SCALE WEIGHT. See **WEIGHT.**

SCRAP IRON. See **JUNK.**

SECTION 1.

Section 1 of the act clearly refers to the construction, maintenance, and operation of switch connections, and under its provisions the Commission has no authority to require a railroad to construct a private sidetrack, authority being limited to requiring a carrier to make a switch connection with a private sidetrack. National Industrial Traffic League v. A. & R. R. R. Co., 120 (121-122).

SECTION 1—Continued.

Paragraph (4) of section 1 and paragraph (6) of section 15, taken together, were intended by the Congress to supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to the Commission's finding or order. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (276).

Under section 1 of the act the Commission's jurisdiction over rates from an adjacent foreign country to points within the United States is limited to that portion of the haul which takes place within the United States. *Lake Superior Paper Co. (Ltd.) v. Director General*, 709 (718).

SECTION 2. See also DISCRIMINATION.

Chassis parts of passenger and freight automobiles are a like kind of traffic within the meaning of section 2 of the act. *Anthony v. Director General*, as Agent, 366 (367-368).

SECTION 3. See also PREFERENCES AND PREJUDICES.

Whether rates from points located on short lines are unduly prejudicial is not controlled by whether or not a mill is located at the junction point. The inhibition of section 3 of the act against undue prejudice applies to localities as well as to shippers at those localities. *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 408 (414).

SECTION 4. See also LONG AND SHORT HAUL; THROUGH AND LOCAL.

There are many subnormal rates in the country as to which the Commission has never been petitioned for fourth section relief, so that the mere fact that no such relief has been granted as to a particular rate does not prove that that rate is normal. *Procter & Gamble Distributing Co. v. A. C. Ry.* 700 (706).

SECTION 5.

Demurrage charges constitute a portion of the earnings of carriers, and it may well be that a contract or agreement under which credits earned at a particular point or industry on the traffic of one carrier might be used to offset debits incurred in connection with traffic of another, is within the spirit of the inhibition of the antipooling provision of section 5 of the act. *Penick & Ford (Ltd.) v. Director General*, 173 (176).

SECTION 13.

As authorized by section 13, paragraph (3), of the act, joint hearing and conference had with certain state commissions and agreement reached as to basis of rates to be prescribed. *Wood Rates between North Pacific Coast Points*, 159 (163).

SECTION 15. See also ALLOWANCES; APPLICATION.

Paragraph (4) of section 1 and paragraph (6) of section 15, taken together, were intended by the Congress to supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to the Commission's finding or order. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (276).

Under the interstate commerce act prior to its amendment by the transportation act, 1920, the Commission could require the adjustment of divisions prior to filing of complaint, but under paragraph (6) which was added to section 15 by the transportation act, it can require adjustment of divisions only from the time the complaint was filed. *Id.* (275-276).

Paragraph (6) of section 15 recognizes clearly that divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers. *Id.* (282).

SECTION 15—Continued.

It was to avoid the unduly prejudicial effect of strategic advantages upon the weaker carriers and the resulting impairment of transportation facilities that the Commission's powers over divisions were clarified and strengthened, and it is not prevented by paragraph (6) of section 15 of the act from taking into consideration any circumstances and conditions which have weight in measuring the justice and reasonableness of divisions. *Id.* (288).

The Commission's power under section 15 of the act is to fix the maximum to be paid as an allowance, and in the exercise of this power it may not require a carrier to make an allowance or fix the precise amount; and it is doubtful whether damages can be awarded for failure to pay except in cases where the allowance is published in the carrier's tariffs and is not more than reasonable for the service. *Rutherford-Brede Co. v. Director General, as Agent*, 515 (517).

SECTION 20. *See also* CUMMINS AMENDMENT.

Property referred to in paragraph (11) of section 20 of the act, refers to property offered for transportation and does not relate to buildings or other property. *National Industrial Traffic League v. A. & R. R. R. Co.*, 120 (124).

SEPARATION OF EXPENSES. *See* ALLOCATION OF COSTS.

SHORT HAUL.

Cancellation of joint rates in effect via a route which short-hauled the originating carrier, leaving in effect higher combinations via that route, without a corresponding change via routes over which the originating carrier would receive the long haul, found justified. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 680 (686).

SHORT-HAUL TRAFFIC.

Legally applicable line-haul rate charged on iron ore, moving during federal control from Pohatcong R. R. interchange tracks near Oxford Furnace, N. J., to Oxford Furnace, found unreasonable to extent it exceeded switching charge subsequently established. *Pequest Co. v. Director General, as Agent*, 16.

Rates on coal from mines at Hillsboro, Ill., to complainant's plant located at that point increased by Director General under general order No. 28, subsequently reduced, and later increased to basis originally established under that order found not unreasonable when consideration given to increased operating and other costs. *Schram Glass Mfg. Co. v. Director General as Agent*, 435.

Substitution by the Director General of a flat increase of 4.5 cents on petroleum and products in lieu of 25 per cent increase as authorized under general order No. 28 from Blue Island, within the switching limits of Chicago, Ill., to near-by destinations not found unreasonable or unduly prejudicial, as such readjustment was made in an effort to minimize serious disturbances of rate relationships and met with the approval of producers, refiners, and jobbers generally. *Barnett Oil & Gas Co. v. Director General as Agent*, 568.

Comparisons of percentages which a uniform specific increase bears to preexisting rates are without great weight, since any increase must result in higher percentage increases on short-haul than on long-haul traffic, and when reasonable for an average haul will yield more revenue for a short haul and less for a long haul. If that fact alone will suffice to condemn it, no uniform specific increase can ever be justified. *Id.* (570).

SHORT-HAUL TRAFFIC—Continued.

Increased charges instituted by the Director General on June 25, 1918, and assessed on shipments of coal moving during federal control by complainant's own power between its plants at Pittsburgh, Pa., in cars furnished by the Director General and over tracks of defendant carrier found unreasonable to extent they exceeded lower charges subsequently established for the service in question. Reparation awarded. *Crucible Steel Co. of America v. Director General as Agent*, 753.

SHORT LINES. See also INDUSTRIAL LINES.

Whether rates from points located on short lines are unduly prejudicial is not controlled by whether or not a mill is located at the junction point. The inhibition of section 3 of the act against undue prejudice applies to localities as well as to shippers at those localities. *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 408 (414).

The general, although not universal, practice throughout the southeast appears to be to make rates from local points on independent short lines by adding an arbitrary to the rate from the junction point. *Swift Lumber Co. v. F. & G. R. R. Co.*, 485 (487).

The following short lines found to be common carriers subject to the act and following *Birmingham Southern R. R. Co.*, 61 I. C. C., 551, arrangements between them and their trunk line connections, with respect to use and detention of foreign cars and basis for settlement of accrued charges, prescribed:

Benwood & Wheeling Connecting Ry. National Tube Co. v. P., C., C. & St. L. R. R. Co., 590 (599-600).

Illinois Northern Ry., 629 (634-636).

McKeesport Connecting R. R. National Tube Co. v. P., C., C. & St. L. R. R. Co., 590 (599-600).

Pullman R. R. Co., 637 (644-646).

Mercer Valley R. R. found not to be a common carrier subject to the act. *National Tube Co. v. P., C., C. & St. L. R. R. Co.*, 590 (598).

Where short line found not to be a common carrier subject to the act, its demurrage tariffs on file with the Commission are of no force and effect and demurrage tariffs of trunk lines are applicable. *Id.* (598).

Practice of trunk lines in absorbing a portion of the charges of a short line, found not to be a common carrier subject to the act, should be discontinued, but it is not unlawful to make a reasonable allowance to such short line for performing a portion of the service included in line-haul rates which trunk lines do not elect to do for themselves. *Id.* (599).

Wyandotte Southern Ry. Co. found to be a common carrier subject to the act which may lawfully participate in joint rates or have its charges on interstate shipments absorbed under proper tariff provision by roads having the line haul. *Wyandotte Southern Ry. Co.*, 756.

The law neither provides nor contemplates that short lines shall receive compensation out of line-haul rates that will yield a return upon the value of the carrier property. They are certainly not entitled to such return from that source upon the value of facilities which are not used by or open to the public generally. *Id.* (760).

SHORTAGE OF CARS. See CAR SHORTAGE.**SIDETRACKS.**

Commission without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for the construction, maintenance, and use of industrial or private sidetracks, limiting liability for loss and damage caused by fire from locomotives operating over such tracks. *National Industrial Traffic League v. A. & R. R. R. Co.*, 120.

SIDETRACKS—Continued.

Section 1 of the act clearly refers to the construction, maintenance, and operation of switch connections, and under its provisions the Commission has no authority to require a railroad to construct a private sidetrack, authority being limited to requiring a carrier to make a switch connection with a private sidetrack. *Id.* (121-122).

Liability clauses contained in contracts or agreements for maintenance, use, and operation of industrial sidetracks do not involve the question of rates, nor the matter of facilities to be furnished by the railroad company for the transportation of property under its obligation as a common carrier. *Id.* (123).

The demands upon a carrier which lawfully may be made are limited by its duty, but it is not its duty as a common carrier to enter into a contract to lease a railroad siding to a shipper or to enter into an agreement to operate privately owned sidetracks. *Id.* (123).

SLEEPING CARS. *See* PULLMAN SERVICE.

SPECIAL SERVICE.

Services of a special character are not subject to the increases authorized under *Increased Rates, 1920*, 58 I. C. C., 220. *National Box Co. v. M. P. R. R. Co.*, 211 (213).

SPECIAL TRAIN.

Based upon the costs accruing from the time the engine and crew are placed at the disposal of shipper, charges for special locomotive and train service required in loading logs along carrier's right of way not found unreasonable. *National Box Co. v. M. P. R. R. Co.*, 211.

SPORADIC MOVEMENT.

Respondents sought to justify cancellation of rates on certain commodities on ground that upon investigation of their records for about one year it developed that there were no c. l. movements. *Held*: Proposed cancellation not justified. Rates between Ohio River and Cumberland River Points, 10 (15).

On an emergency shipment of limestone, moving during federal control, from Williamson, Pa., to Midland, Pa., rate charged found not unreasonable as compared with lower rate subsequently established after request therefor made. *Pittsburgh Crucible Steel Co. v. Director General*, as Agent, 56.

Rate legally applicable on ice from Jacksonville, Fla., to Atlanta, Ga., found not unreasonable as compared with lower rate in the opposite direction or as compared with lower rate temporarily established after shipments moved to meet an ice shortage at Atlanta. *Atlantic Ice & Coal Corp. v. S. Ry. Co.*, 111.

SPOTTING CARS.

Cancellation by trunk line, following *Industrial Railways Case*, 29 I. C. C., 212, of allowance formerly paid complainant or its plant facility, the Culver & Port Clinton R. R., for switching cars from its plant at Culver, Ohio, while performing a similar service for competitors without charge, found not unreasonable or unduly prejudicial, as it has not been possible for trunk line to perform the service and circumstances and conditions at complainant's plant are different from those obtaining at plants of competitors. *United States Gypsum Co. v. C. & P. C. R. R. Co.*, 117.

61 I. C. C.

SPOTTING CARS—Continued.

Defendant's refusal to make allowance to complainant for spotting cars at Harriman shipyard, near Bristol, Pa., while making allowances to other industries in the same rate district, found not unreasonable, discriminatory, or unduly prejudicial, as such industries are not in competition with complainant and circumstances and conditions at the respective plants are dissimilar. *Merchant Shipbuilding Corp. v. P. R. R. Co.*, 214.

No legal obligation rests upon carriers to perform switching and spotting service solely at a shipper's convenience and a shipper is not entitled to an allowance for a service which the carrier is ready and willing to perform and which the shipper performs because it is not convenient for it to permit the carrier to do so. *Id.* (217).

Though there may be no affirmative obligation upon carriers to perform spotting services under line-haul rates, they may not practice unjust discrimination or undue prejudice by making allowances to competitive shippers, at whose plants substantially similar circumstances and conditions are shown to exist. *Id.* (217-218).

Failure of defendant to perform spotting service at complainant's plant at Edge Moor, Del., or to make an allowance to complainant for performing such service with its own power, while making allowance for similar service at a plant adjacent to that of complainant with whom no competition exists, not found to result in unreasonable, discriminatory, or unduly prejudicial rates. Complainant never requested defendant to perform the service and merely sought an allowance rather than have defendant perform it. *Edge Moor Iron Co. v. Director General*, as Agent, 537.

Carriers are required to deliver or receive c. l. freight at the usual points of loading or unloading unless such points are so located that the request for receipt and delivery at such spots could not, in view of general usage, be regarded as reasonable. *Id.* (540).

STATE AND INTERSTATE.

Rate on ground limestone from Bedford, Ind., to Streator, Ill., found not unreasonable or unduly prejudicial in comparison with rate from Alton, Ill., to same destination, as different carriers participate in the traffic and the transportation conditions are not shown to be substantially similar. *Stone Products Co. v. Director General*, as Agent, 51.

Upon further hearing, original report 60 I. C. C., 61, intrastate passenger fares and excess baggage charges, in the state of Montana, of the Butte, Anaconda & Pacific Ry. Co., an electric line, lower than the corresponding interstate fares and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Montana Rates and Fares*, 500.

Certain intrastate rates, fares, and charges required by state authority to be maintained within the state, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates, 1920*, found unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. *North Dakota Rates, Fares, and Charges* 504; *Arizona Rates, Fares, and Charges*, 572.

STATE COMMISSION.

As authorized by section 13, paragraph (3), of the interstate commerce act, joint hearing and conference had with certain state commissions and agreement reached as to basis of rates to be prescribed. *Wood Rates between North Pacific Coast Points*, 159 (163).

STATE RATES. *See also* STATE AND INTERSTATE.

Class rates on spent sulphuric or sludge acid, in tank-car loads, moving during federal control, from Arkansas City, Eldorado, Augusta, and Wichita, Kans., to Coffeyville, Kans., exceeded lower commodity rates subsequently established. Reparation awarded. *Sinclair Refining Co. v. Director General*, as Agent, 18.

Intrastate shipments moving prior to the period of federal control are not within the jurisdiction of the Commission. *Id.* (18).

Class rate legally applicable on asphaltum, moving during federal control from Bayonne, Constable Hook, and Warners, N. J., to Jersey Avenue Station, Jersey City, N. J., found unreasonable as compared with lower commodity rates to other New Jersey points for similar distances. Reparation awarded on basis of commodity rate subsequently established. *National Asbestos Mfg. Co. v. Director General*, as Agent, 54.

On an emergency shipment of limestone moving during federal control from Williamson, Pa., to Midland, Pa., rate charged found not unreasonable as compared with lower rate subsequently established after request therefor made. *Pittsburgh Crucible Steel Co. v. Director General*, as Agent, 56.

Where complainant performed practically all terminal service in connection with, and furnished all cars for, the transportation of intrastate shipments of wet marl, minimum charge of \$15 per car assessed after June 25, 1918, under general order No. 28, found unreasonable to extent it exceeded \$7.50 per car. Reparation awarded. *Peerless Portland Cement Co. v. Director General*, as Agent, 169.

State commission after termination of federal control found certain intrastate rates to be unreasonable and filed application with the Commission, under section 208 of the transportation act, 1920, for approval of its order awarding reparation during the guaranty period, March 1 to September 1, 1920. *Id.* (171).

Where issue of undue or unreasonable advantage, preference, or prejudice is not involved in the proceeding, the Commission's jurisdiction to make a finding for the future as to state rates, is confined to the period of federal control which terminated March 1, 1920. *Cairo Board of Trade v. A., T. & S. F. Ry. Co.*, 219 (222); *Barrett Co. v. Director General*, as Agent, 401 (402).

Due to an embargo via the normal route, shipper was obliged to route intrastate shipments for delivery via route over which higher rate applied. *Held*: As distance over both routes practically the same and shipments moved during federal control, when the carriers were being operated as part of a national system, and were, for then-present purposes, a single line, higher rate charged found unreasonable. Reparation awarded. *Barrett Co. v. Director General*, as Agent, 401.

Rates on coal from mines at Hillsboro, Ill., to complainant's plant, located at that point, increased by Director General under general order No. 28, subsequently reduced, and later increased to basis originally established under that order, found not unreasonable when consideration given to increased operating and other costs. *Schram Glass Mfg. Co. v. Director General*, as Agent, 435.

Class rate on sulphuric acid, in tank-car loads, from Charlotte, N. C., to Selma, N. C., moving during federal control, found unreasonable to extent it exceeded lower commodity rate subsequently established. Reparation awarded. *Virginia-Carolina Chemical Co. v. Director General*, as Agent, 473.

STATE RATES—Continued.

Rate applicable on chipboard from Whippany, N. J., to Jersey City, N. J., moving during federal control, found unreasonable to extent it exceeded lower rate subsequently established. Collection of undercharges waived. *United Paperboard Co. (Inc.) v. M. & E. R. R. Co.*, 483.

Rate on steel car-plates, moving during federal control, from Indiana Harbor, Ind., to Michigan City, Ind., found unreasonable as compared with lower rate between other points in the same general territory for similar distances, and to extent it exceeded lower rate subsequently established. Reparation awarded. *Steel & Tube Co. v. Director General*, as Agent, 526.

The Commission's jurisdiction over intrastate rates is limited to cases falling within the provisions of section 206 (c) of the transportation act, 1920. *Barnett Oil & Gas Co. v. Director General*, as Agent, 568 (569); *Prince-Johnson Limestone Co. v. Director General*, as Agent, 602.

Tank cars not belonging to carrier were switched between complainant's plants at Pittsburgh, Pa., during federal control, by individual power, the carrier merely providing the use of its tracks. Charges assessed on basis of those intended to cover the entire cost of transportation found unreasonable to extent they exceeded those subsequently established for the service in question. Reparation awarded. *Crucible Steel Co. of America v. Director General*, as Agent, 655.

Following *Birdsboro Stone Co.*, 61 I. C. C., 46, rates on crushed stone from Monocacy, Pa., to destinations in Pennsylvania, moving during federal control, found unreasonable to extent they exceeded distance rates subsequently established. Reparation awarded. *Birdsboro Stone Co. v. P. R. R. Co.*, 657.

Intrastate shipment moved as routed during federal control. Lower rate in effect via another route was subsequently established via route of movement. *Held*: Mere existence of a lower rate between the same points over another route and the subsequent reduction of the rate over the route of movement does not establish the unreasonableness of the pre-existing rate. *Little Ohababa Coal Co. v. Director General*, as Agent, 663.

Minimum charge of \$15 per car established by the Director General on June 25, 1918, and assessed on wet phosphate rock moving during federal control from Alafia, Fla., to Agricola, Fla., found unreasonable to extent it exceeded 20 cents per long ton, minimum marked capacity of car, subsequently established. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 751.

Increased charges instituted by the Director General on June 25, 1918, and assessed on shipments of coal moving during federal control by complainant's own power, between its plants at Pittsburgh, Pa., in cars furnished by the Director General and over tracks of defendant carrier found unreasonable to extent they exceeded lower charges subsequently established for the service in question. Reparation awarded. *Crucible Steel Co. of America v. Director General*, as Agent, 753.

Movements between complainant's plants, located in the same city, found to be intrastate and subject to the Commission's jurisdiction under section 206 (c) of the transportation act, 1920, because invoked by "prayer for reparation account of damages caused by collection or enforcement by or through the President during federal control of charges (including those applicable to intrastate traffic), which were unjust, unreasonable, * * *." *Id.* (754).

STATUTE OF LIMITATIONS. *See* LIMITATION OF ACTION.

STORAGE.

Due to decree prohibiting entry into France of luxuries shipment was stored and subsequently sold for domestic consumption. Contention that under the circumstances export storage charges should have been assessed, found not sustained. Domestic storage charges found legally applicable and not unreasonable. *Manufacturers Export Clearing House v. Director General*, as Agent, 85.

Tariff restricted application of import rate to traffic stored in possession of inland carriers or appraisers' stores, but subsequently was made applicable to shipment stored in privately owned warehouses. Domestic rates charged on shipments stored in private warehouses because railroad warehouses unavailable and storage in appraisers' stores not permissible, found unreasonable. Reparation awarded. *American Mfg. Co. v. M. P. R. R. Co.*, 341.

SUBNORMAL RATES.

There are many subnormal rates in the country as to which the Commission has never been petitioned for fourth section relief, so that the mere fact that no such relief has been granted as to a particular rate does not prove that that rate is normal. *Procter & Gamble Distributing Co. v. A. C. Ry.*, 700 (706).

SUBSEQUENTLY-ESTABLISHED RATES. *See* REDUCTION IN RATES (BY CARRIERS).

SUBSTITUTION OF TONNAGE.

The substitution at the transit point of one article for another, when not specifically authorized by the tariff, is unlawful and will subject the parties guilty thereof to criminal prosecution. *American Creosoting Co. v. Director General*, 145 (149).

SUITS. *See* PENDING COMPLAINTS.

SURCHARGE. *See* PULLMAN SERVICE.

SWITCH CONNECTION.

Section 1 of the act clearly refers to the construction, maintenance, and operation of switch connections, and under its provisions the Commission has no authority to require a railroad to construct a private side track, authority being limited to requiring a carrier to make a switch connection with a private side track. *National Industrial Traffic League v. A. & R. R. Co.*, 120 (121-122).

SWITCHING. *See also* INTERCHANGE SWITCHING; SPOTTING CARS.

Legally applicable line-haul rate charged on iron ore, moving during federal control, from Pohatcong R. R. interchange tracks near Oxford Furnace, N. J., to Oxford Furnace, found unreasonable to extent it exceeded switching charge subsequently established. *Pequest Co. v. Director General*, as Agent, 16.

Carriers propose to restrict absorptions of switching charges of the Fort Worth Belt Ry. to specific amounts which are less than the present switching charges from or to industries and public stockyards at Fort Worth, Tex. *Held*: Line-haul carriers absorb full amount of switching charges to and from competing markets which are on a rate parity with Fort Worth, and as that relationship would be disrupted, proposed increased charges found not justified. *Absorption of Switching Charges at Fort Worth*, 73.

The Fort Worth Belt Ry. found to be a switching agency employed by the line-haul carriers in completion of contracts between carriers and shippers, and its charges should be a part of the freight charge made to the shipper, and not in addition thereto. *Id.* (76).

SWITCHING—Continued.

Following *Absorption of Switching Charges at Fort Worth*, 61 I. C. C., 78, increased through charges on interstate shipments to and from industries on the Fort Worth Belt Ry., at Fort Worth, Tex., under schedules which limited the amount of switching charges absorbed by certain carriers, found not justified, and during such periods when the full amounts of the switching charges were not absorbed, found unreasonable to extent they exceeded the line-haul rates from and to Fort Worth. Proceeding held open on issue of reparation. *Swift & Co. v. Ft. W. & D. C. Ry. Co.*, 77.

Proposal of the Minneapolis & St. Louis R. R. to increase its charge for switching between industries on its line at Mason City, Iowa, and the interchange tracks of connecting lines found not justified. *Switching Charges at Mason City, Iowa*, 479.

Proposed cancellation by the C., C., C. & St. L. Ry. Co. of its switching charges between its incline or river track and connecting lines' tracks at Cairo, Ill., and from its track barge to connecting lines' tracks at the same place, thereby making applicable class distance rates which are higher, found not justified. *Switching between Incline Tracks and Connections at Cairo*, 535.

Denial of switching reclaims to Birmingham Southern R. R., on foreign cars handled under divisions of joint rates, held not to be unreasonable or unduly prejudicial, but the assessment of demurrage against that road under uniform demurrage code, without allowance of additional free time to cover the period actually required for switching service performed, disapproved and substitute prescribed. *Birmingham Southern R. R. Co. v. Director General*, as Agent, 551.

Following *Industrial Railways Case*, 29 I. C. C., 212, 231, and other cited cases, allowance of switching reclaims to industrial common carriers, condemned. *Id.* (555).

In making a general separation of the expenses chargeable to interchange and interior plant switching the engine hour will usually be found a safer guide than number of cars handled. *Illinois Northern Ry.*, 629 (633-634).

Proposed increased charges of the M. & St. L. R. R. and Railway Transfer Co., for switching interstate shipments at Minneapolis, St. Louis Park, and Hopkins, Minn., found not justified, but inadequacy of present revenues clearly demonstrated by cost figures submitted and reasonable and just charges prescribed. *Switching and Absorption at Minneapolis*, 646.

Proposed limitation on the amount of switching charges of the M. & St. L. R. R. and the Railway Transfer Co., that will be absorbed by the C., St. P., M. & O. and M., St. P. & S. S. M. railways, and which will result in increases in the charges assessed for line-haul movements against certain shippers and receivers of freight, found not justified. *Id.* (646).

Cost of performing switching service at Minneapolis, Minn., discussed. *Id.* (649-651).

Tank cars not belonging to the carrier were switched at Pittsburgh, Pa., during federal control by individual power, the carrier merely providing the use of its tracks. Charges assessed on basis of those intended to cover the entire cost of transportation found unreasonable to extent they exceeded those subsequently established for the services in question. Reparation awarded. *Crucible Steel Co. of America v. Director General*, as Agent, 655.

SWITCHING—Continued.

No opinion expressed by the Commission as to the propriety or legality of a tariff provision, when applied to interstate shipments, under which carriers assess charges for, and permit the use of, its rails and cars by an industry with its own power in the movement of its own property between its plants located in different parts of the same locality. *Crucible Steel Co. of America v. Director General*, as Agent, 655; *Same v. Same*, 753.

Proposal of the B. & O. R. R. to establish a charge of 35 cents per net ton in lieu of its present charge of \$3 per car for switching coal and coke from its point of interchange with the Chesapeake Western at Harrisonburg, Va., to industries on its line and to its connection with the Southern at that point, found not justified. *Switching Coal and Coke at Harrisonburg*, 667.

Increased charges instituted by the Director General on June 25, 1918, and assessed on shipments of coal moving during federal control by complainant's own power, between its plants at Pittsburgh, Pa., in cars furnished by the Director General and over tracks of defendant carrier, found unreasonable to extent they exceeded lower charges subsequently established for the service in question. Reparation awarded. *Crucible Steel Co. of America v. Director General*, as Agent, 753.

SYSTEM.

By forming through routes and publishing through rates carriers have merged their lines into one so far as particular traffic is concerned, and as a single through route or line, they can not withhold from some points on that route valuable services which they voluntarily perform at other points on that route. *Southern Hardwood Traffic Asso. v. Director General*, 132 (141).

It was within the discretionary power of the Director General to treat the railroads as a unit or as separate lines, and while he might have provided for assessment of demurrage under a single average agreement at complainant's plant, on traffic handled by three different lines, he did not do so, and nothing in the federal control act required that he should do so. *Penick & Ford (Ltd.) v. Director General*, 173 (177).

The railroads should be regarded more and more as one national system, and the time may not be far distant when the Commission should proceed to the establishment of joint through class and commodity rates, lower than the combinations of locals, between practically all points in the country. *Intermediate Rate Asso. v. Director General*, 226 (246).

For the purpose of fixing divisions separate corporate organizations of commonly controlled and operated carriers should be disregarded, and they should be treated as one system. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (284).

The Illinois Central and Yazoo & Mississippi Valley should be treated as one line for rate-making purposes. *North Vernon Lumber Co. v. I. C. R. R. Co.*, 355 (361).

Due to an embargo via the normal route, shipper was obliged to route intrastate shipments for delivery via route over which higher rate applied. *Held*: As distances over both routes practically the same and shipments moved during federal control, when the carriers were being operated as part of a national system, and were, for then-present purposes, a single line, higher rate charged found unreasonable. Reparation awarded. *Barrett Co. v. Director General*, as Agent, 401.

TARIFF CIRCULAR.

Rule 5 (b) of Tariff Circular 18-A, cited. *Memphis Freight Bureau v. Director General*, as Agent, 125 (126).

Rule 9 (j) of Tariff Circular 18-A, cited. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (278).

Rule 77 of Tariff Circular 18-A, cited. *Red Star Yeast & Products Co. v. Director General*, as Agent, 107; *Soda Products from Saltville, Va.*, 559 (562).

TARIFF INTERPRETATION.

Shipments originated on rails of carriers publishing rates higher than when originating on the line of delivering carrier specified in bill of lading, whose rails also reached point of origin. Complainant asks that lower rates named in tariff of terminal carrier be applied on traffic originating on such other lines, but since carriers on whose lines shipments originated concurred in tariff naming lower rates on traffic to, via, but not from points on the concurring line, rates charged found legally applicable. *Lieberman Iron Co. v. Director General*, 21.

TARIFF PUBLICATION. See PUBLICATION OF TARIFFS.

TAXES. See WAR TAX.

TELEGRAMS. See TRANSMISSION OF INTELLIGENCE.

TELEGRAPH COMPANIES.

Requirement of adherence to established rates and charges, as provided in the act, applies as strictly to telegraph companies as to other common carriers. *Limitations of Liability in Transmitting Telegrams*, 541 (545).

TELEPHONIC NOTICE. See NOTICE OF ARRIVAL.

TEMPORARY RATES. See EMERGENCY RATES.

"TENDERED."

The word "tendered," as used in constructive placement provision of demurrage tariff construed to require that shipments be tendered for delivery at bill destination, or, at most, at a point reasonably adjacent to such destination. *Union Bag & Paper Corp. v. Director General*, as Agent, 424 (427).

TERMINAL COMPANY.

Assessing demurrage under three separate average agreements at complainant's plant, served by a terminal company who acts as agent of the trunk lines, found not unreasonable or unlawful, as the situation was the same as if the rails of the three carriers separately reached the plant, and each was within its rights in applying its separately established demurrage rules in connection with the traffic which it handled. *Penick & Ford (Ltd.) v. Director General*, 173.

THROUGH AND LOCAL.

Upon rehearing, original report 53 I. C. C., 529, rates on fire brick, fire clay, and dolies from St. Louis and Mexico, Mo., to Quinton, Okla., found to have been unreasonable to extent they exceeded the aggregate of intermediate rates. Reparation awarded. *Quinton Spelter Co. v. Ft. S. & W. R. R. Co.*, 43.

Rate on wall board, l. c. l., from Greenville, Miss., to Monroe, La., found unreasonable to extent it exceeded the aggregate of intermediate rates to and from Vicksburg, Miss. *Parlor City Lumber Co. v. Director General*, as Agent, 208.

61 I. C. C.

THROUGH AND LOCAL—Continued.

The railroads should be regarded more and more as one national system, and the time may not be far distant when the Commission should proceed to the establishment of joint through class and commodity rates lower than the combination of locals between practically all points in the country. *Intermediate Rate Asso. v. Director General*, 226 (246).

The Commission has generally recognized that through rates should be less than the combinations, but prompted chiefly by considerations of paramount public interest, growing out of the revenue conditions of certain carriers it has refrained from and even declined absolute condemnation of combinations. *Id.* (246).

Rate on range cattle from Rock Springs, Wyo., to Storey, Calif., exceeded the aggregate of intermediate rates via route of movement to and beyond Ogden, Utah. Measure of reasonable maximum rate prescribed. *Russell Bros. v. Director General, as Agent*, 671.

Rates on potatoes from points in Minnesota and Wisconsin within the Princeton group to Texas common points not included in northeast Texas found unreasonable to extent they exceeded and exceed the aggregate of intermediate rates from and to the same points. Measure of reasonable maximum rates prescribed. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 680 (687).

Rate on coal-tar oil, in tank-car loads, from Chattanooga, Tenn., to Solvay, N. Y., found unreasonable and unlawful to extent it exceeded the aggregate of intermediate rates to and from Cincinnati, Ohio. Reparation awarded. *Chattanooga Coke & Gas Co. v. Director General, as Agent*, 729 (732).

THROUGH ROUTES AND JOINT RATES.

Where no question of extending transit into a new territory is involved, so long as lines forming through routes and publishing joint rates applicable thereto allow transit on basis of the through rates at some points, they may be required to accord transit on the same basis at competing points on such through routes. *Southern Hardwood Traffic Asso. v. Director General*, 132 (141).

By forming through routes and publishing through rates carriers have merged their lines into one so far as particular traffic is concerned, and as a single through route or line they can not withhold from some points on that route valuable services which they voluntarily perform at other points on that route. *Id.* (141).

The matter of according transit at a certain point should not be regarded from the standpoint alone of one carrier in the through route, but from the standpoint of all the carriers comprising the through route. *Id.* (142).

Following *Southern Hardwood Traffic Asso.*, 61 I. C. C., 132, defendants' participation in tariffs carrying joint rates on lumber and permitting under such rates creosoting in transit at various points, while denying similar transit upon the same through routes at Newark, N. J., found to result in undue prejudice and disadvantage. *American Creosoting Co. v. Director General*, 145.

TICKETS. See COMMUTATION FARES AND TICKETS.

TON-MILE REVENUE.

Where no allowance is made for terminal costs and the hauls vary greatly in length, comparisons of ton-mile earnings are apt to be misleading. *P. & W. V. Ry. Co. v. P. & L. E. R. R. Co.*, 272 (283).

TRANSCONTINENTAL RATES.

Rates from points east of the Rocky Mountains to intermountain territory found not unreasonable, unduly prejudicial, or otherwise unlawful as compared with rates to the Pacific Coast. Plans submitted by parties proposing a system of graded rates to such territory not adopted in view of changing economic and transportation conditions and diverse opinions. *Intermediate Rate Asso. v. Director General*, 226.

TRANSIT ARRANGEMENTS.

In General:

The Commission has repeatedly refused to give retroactive effect to transit arrangements except to remove unlawful discrimination. *Taylor v. Director General*, as Agent, 109 (110).

Defendants' participation in tariffs carrying joint rates on lumber and forest products and permitting under such rates transit at various points, while denying similar transit upon the same through routes at Memphis, Tenn., and Louisville, Ky., found to result in undue prejudice and disadvantage. *Southern Hardwood Traffic Asso. v. Director General*, 182.

Transit is not part of the transportation service, such as expedited movement of freight, but "something offered to the shipper in addition to the transportation service." *Id.* (139).

Where no question of extending transit into a new territory is involved, so long as lines forming through routes and publishing joint rates applicable thereto allow transit on basis of the through rates at some points, they may be required to accord transit on the same basis at competing points on such through routes. *Id.* (141).

By forming through routes and publishing through rates carriers have merged their lines into one so far as particular traffic is concerned, and as a single through route or line they can not withhold from some points on that route valuable services which they voluntarily perform at other points on that route. *Id.* (141).

The matter of according transit at a certain point should not be regarded from the standpoint alone of one carrier in the through route, but from the standpoint of all the carriers comprising the through route. *Id.* (142).

Where practicable, establishment of in-and-out rates is desirable in lieu of transit arrangements, but every point can not be made a rate-breaking point. *Cairo Board of Trade v. A., T. & S. F. Ry. Co.*, 219 (222).

Compression: Rate on cotton, delivered uncompressed to carrier at Jackson, Tenn., compressed at its expense, and forwarded to Cordova, Ala., found unreasonable to extent it exceeded lower rate in effect via other routes on compressed cotton, and on uncompressed cotton to be transported to destination uncompressed, which lower rate was subsequently established via route of movement and which is the usual basis in this territory on uncompressed cotton, with carrier's privilege of compression. Reparation awarded. *Memphis Freight Bureau v. Director General*, as Agent, 125.

Creosoting: Following *Southern Hardwood Traffic Asso.*, 61 I. C. C., 182, defendants' participation in tariffs carrying joint rates on lumber and permitting under such rates creosoting in transit at various points, while denying similar transit upon the same through routes at Newark, N. J., found to result in undue prejudice and disadvantage. *American Creosoting Co. v. Director General*, 145.

TRANSIT ARRANGEMENTS—Continued.

Grazing: Defendant's agent erroneously quoted rate in effect via other routes as applying via route of movement, but tariff did not, at time shipment moved, permit grazing in transit at point here involved. Subsequently such lower rate established via route of movement. *Held:* Misquotation of a rate by a carrier does not of itself afford a basis for an award of reparation, and the Commission refuses to give retroactive effect to a transit arrangement except to remove unlawful discrimination. *Taylor v. Director General, as Agent, 109.*

TRANSMISSION OF INTELLIGENCE.

Upon investigation, present rules of telegraph companies limiting their liability for negligence in the transmission or delivery, or for nondelivery, of unrepeatd and repeated messages, constituting integral parts of the respective rates, found unreasonable. Reasonable maximum limitation of liability prescribed. *Limitations of Liability in Transmitting Telegrams, 541.*

A telegraph company, as a common carrier, may lawfully undertake by contract, rule, regulation, or in any manner to exempt itself from full liability for errors or delays in transmission of messages. *Primrose Case, 154 U. S., 1, and Postal Telegraph Cable Co. Case, 251 U. S., 27. Id. (545).*

Requirement of adherence to established rates and charges, as provided in the act, applies as strictly to telegraph companies as to other common carriers. *Id. (545).*

Policy of the Western Union Telegraph Co., when a default occurs in connection with a message for which it charged the unrepeatd rate, to assume liability in excess of its legal liability on the grounds of business policy, equity, and fair dealing, found to be a plain departure from its published rules and stands on the same footing as an unlawful rebate. *Id. (546).*

All other common carriers subject to the act have been made fully liable for their errors or negligence, notwithstanding attempted limitations by contracts, rules, or otherwise, and there is no sound reason why telegraph companies should longer be permitted to avoid liability for their errors or negligence or to limit it to the nominal amounts now provided for in their rules. *Id. (549).*

Provision should be made in rules of telegraph companies for the transmission of valued messages under a liability limited to the value stated in writing by the sender at the time they are offered for transmission upon payment of the repeated rate plus one-tenth of 1 per cent of the stated value in excess of \$5,000. *Id. (550).*

Transit is not part of the transportation service, such as the expedited movement of freight, but "something offered to the shipper in addition to the transportation service." *Southern Hardwood Traffic Assn. v. Director General, 182 (139).*

A carrier has a right to perform any transportation service that is required of it, but it may elect to hire the industry or some one else to perform that duty. *Edge Moor Iron Co. v. Director General, as Agent, 537 (539).*

UNIFORM DEMURRAGE CODE. *See DEMURRAGE.*

UNIFORMITY.

Differences in conditions may justify variations in rules and practices. Uniformity is highly desirable with respect to many practices of common carriers, but where uniformity injuriously affects practices that are essentially local it is not desirable. *National Industrial Traffic League v. A. & R. R. Co., 120.*

UNIFORMITY—Continued.

Proposed increased rates on fuel wood, pulp wood, and wood bolts between points in Idaho, Oregon, and Washington found not justified, as their approval would not bring about a uniform and nonprejudicial basis for general application throughout those states. Reasonable and nonprejudicial distance scale prescribed. *Wood Rates between North Pacific Coast Points*, 159.

UNLOADING. See LOADING AND UNLOADING. USE.

Rates may not be predicated upon the proposed use of commodities transported. *Anthony v. Director General, as Agent*, 366 (368).

UNREPEATED MESSAGES. See TRANSMISSION OF INTELLIGENCE. VALUE OF COMMODITY.

Contention that difference in values warranted a lower rate on cotton linters, uncompressed, than on cotton, found not sustained as in *Louisiana Cotton*, 46 I. C. C., 451, 453, the Commission approved rates on linters the same as those on cotton. *Speir & McKay v. Director General, as Agent*, 736.

VALUED MESSAGES. See TRANSMISSION OF INTELLIGENCE.**VOLUME OF TRAFFIC. See also SPORADIC MOVEMENT.**

Volume of movement is not determinative of the right to a c. l. rating. Nor must it be shown that increased movement in c. l. quantities would result from its establishment. *Interstate Cotton Seed Crushers' Asso. v. Director General*, 1 (6).

In comparing average rates on all commodities with a particular commodity the relative volume of low-grade traffic must always be allowed for. *Watson Co. v. Director General, as Agent*, 719 (723).

VOLUNTARY REDUCTION. See REDUCTION IN RATES (BY CARRIERS). WAR TAX.

The Commission is without authority to order refund of war taxes. *Daugherty & Son Refining Co. v. Director General, as Agent*, 197 (199); *Crucible Steel Co. of America v. Director General, as Agent*, 655 (656).

WATER-AND-RAIL. See also LAKE-AND-RAIL; RAIL-AND-WATER.

Rates on soaps, washing, cleansing, and soap powders, and scouring compounds, of declared or agreed value not in excess of 20 cents per pound, from Port Ivory, N. Y., and Weehawken and Jersey City, N. J., to junction points in northern Florida, found unreasonable to extent they exceed, distance considered, the rates to points in southern Georgia. Measure of reasonable maximum rates prescribed. *Procter & Gamble Distributing Co. v. A. C. Ry.*, 700 (708).

Proposed reductions in class and commodity rates applicable via water-and-rail and rail, water, and rail from Atlantic seaboard territory to Texas points, found not justified. *Rail-and-Water Rates from Atlantic Seaboard*, 740.

WEATHER INTERFERENCE. See also FREEZING.

Consignee failed to unload ore frozen in transit within prescribed free time. Tariff provided that written statement be served upon carrier's agent within free time that lading was frozen upon arrival. Verbal notice given carrier's employee within 48 hours after placement, and since defendant actually knew that frozen condition of ore precluded unloading, demurrage charges assessed found unreasonable. Reparation awarded. *Virginia Iron, Coal & Coke Co. v. Director General, as Agent*, 200.

WEATHER INTERFERENCE—Continued.

Shippers are entitled to a reasonable free time for loading or unloading cars, and the principle has long been recognized that demurrage should not be imposed for delays occasioned by weather interference. *Id.* (201).

When a shipment is tendered for delivery in a frozen condition and for that reason can not be unloaded within the prescribed free time, it is not unreasonable to require that due notice to that effect be given in order that the carrier may have the necessary information upon which to base demurrage charges and be afforded opportunity to take proper steps to expedite unloading. *Id.* (201).

WEIGHT. See also MINIMUM WEIGHT.

Estimated:

Hardwood logs per 1,000 feet, 14,000 pounds; soft wood, 10,000 pounds; and mixed, 12,000 pounds. Average shipment said to weigh between 12,000 and 14,000 pounds per 1,000 feet. Logs from Baltimore, Mich., 496 (497).

Proposal of American Ry. Express Co. to increase estimated weights on kale, lettuce, and spinach, in bushel containers and in barrels, together with c. l. minimum weights on same, found not justified. Present weights have been in effect since the inception of the industry, rates have been made with relation thereto, and the practical and only effect of the proposed increases would be a substantial increase in transportation charges. Increased Weights on Kale, Lettuce, and Spinach, 586.

Are commonly used for the convenience of both shipper and carrier and should bear some close relation to the actual weights. *Id.* (589).

Where practical and only effect of proposed increases in estimated weights would be a substantial increase in transportation charges, carriers should show not only that the proposed estimated weights are not excessive but also that the application of existing rates to such estimated weights will not result in unreasonable transportation charges. *Id.* (589).

Scale: Complainant alleged that charges on lumber were based on an excessive weight, but against the weights ascertained by track-scale weighing of the several shipments, on which basis charges were assessed, complainant sets up only estimated weights not based on ascertained weight of any part of the shipments. *Held:* Charges assessed not unreasonable. *Interior Lumber Co. v. Director General*, as Agent, 661.

WHARFAGE CHARGES. See HANDLING CHARGES.**WRITTEN NOTICE. See NOTICE; NOTICE OF ARRIVAL.****WYANDOTTE SOUTHERN RAILWAY COMPANY.**

History and description of. Wyandotte Southern Ry. Co., 756-758.
Found to be a common carrier subject to the act. *Id.* (756).



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